

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

FOR MR. CHIEF JUSTICE MARTIN.

Rabb

1929 May 4
Cliff
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TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia

APRIL TERM, 1929

No. 5013

718

LASKEY W. JOHNSON, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA.

**IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.**

FILED JULY 20, 1929.

PRINTED JULY 24, 1929.

Court of Appeals of the District of Columbia

APRIL TERM, 1929

No. 5013

LASKEY W. JOHNSON, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original	Print
Caption	1	1
Declaration	2	1
Affidavit of plaintiff.....	3	3
Bill of particulars.....	5	5
Agreed statement of facts.....	6	5
Judgment	9	8
Assignment of errors.....	9	9
Bill of exceptions.....	10	9
Writ of error.....	12	11
Designation of record.....	13	12
Clerk's certificate.....	13	12

Court of Appeals of the District of Columbia

No. 5013.

LASKEY W. JOHNSON, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA.

1 Municipal Court of the District of Columbia.

At Law.

No. A-4438.

LASKEY W. JOHNSON, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

2 *Declaration.*

(Filed October 31, 1927.)

In the Municipal Court of the District of Columbia.

At Law.

No. A-4438.

LASKEY W. JOHNSON, Address: 223 Sheridan St. N. W.,
Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Declaration.

Plaintiff sues defendant for balances of salary due plaintiff as teacher in the public schools of the District of Co-

lumbia in respect of the periods following, pursuant to the provisions of Act of Congress approved June 4, 1924, Article I, Class 1, Group A, and Article IV; and says plaintiff was on June 30, 1924, a teacher on permanent tenure at an annual salary of \$1,530.00; that for the fiscal year beginning July 1, 1924, plaintiff was duly assigned to said salary Class 1, Group A, and her service has been satisfactory; that prior to the year ending June 30, 1924, she had — years of experience in teaching in positions in accredited schools like that which she held on July 1, 1924; and that her claim is as follows:

Period of ten months, school year, end- ing June 30		Salary claimed. in ten equal monthly instal- ments, pursuant to above Act	Salary paid	Balances claimed
1925	Sec. 4, par. (c)	\$1,600		
	plus	100		
	Sec. 4, par. (d)			
	Sec. 6, par. (q)	300		
	Total for year	\$2,000	\$1,800	\$200
1926	Rate of previous year	\$2,000	\$1,800	
	Sec. 7	100	100	
	Total for year	\$2,100	\$1,900	\$200
1927	Rate of previous year	\$2,100	\$1,900	
	Sec. 7	100	100	
	Total for year	\$2,200	\$2,000	\$200
	Total principal claim			\$600
	Interest on monthly balances to June 30, 1927			49.50
	Wherefore she brings this suit and claims			\$649.50
	with interest on \$600.00 from June 30, 1927.			

(Signed)

PEELLE, OGILBY & LESH,
PAUL E. LESH,
Attorneys for Plaintiff.

3

Affidavit of Plaintiff.

(Filed October 31, 1927.)

In the Municipal Court of the District of Columbia.

At Law.

No. A-4438.

LASKEY W. JOHNSON, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Affidavit of Plaintiff.

DISTRICT OF COLUMBIA, ss:

Laskey W. Johnson, being first duly sworn, deposes and says that she is the plaintiff in the above entitled case, and has a just cause of action against the defendant, the District of Columbia, upon the following grounds:

Deponent was during the school year ending June 30, 1924, a teacher in the public schools of the District of Columbia, on permanent tenure in salary class 4, as the salaries of teachers are classified according to the Act of Congress approved June 20, 1906, and amendments thereto known as the Organic School Act, then in force. That deponent thereafter continuously remained during the periods herein mentioned a teacher in the said public schools, and has, since her original appointment therein, rendered satisfactory service.

That for the year ending June 30, 1924, deponent received a basic salary of \$1,200 pursuant to said Organic Act as amended, and a bonus of \$240, pursuant to the Acts of Congress applicable to teachers and many other civil employees of the government, plus three annual increases, for prior service, of \$30, a total annual salary of \$1,530.

That during the fiscal year ending June 30, 1925, deponent was duly assigned to Group A, Class 1, as the salaries of teachers are classified by the Act of Congress approved June 4, 1924.

Deponent was paid during the fiscal year ending June 30, 1925, as salary, the sum of \$1,800, in ten monthly instalments of \$180 each, paid and payable the last days of September to June, inclusive; and during the fiscal year ending June 30, 1926, \$1,900.00, in like monthly instalments of \$190 each; and during the fiscal year ending June 30, 1927, \$2,000.00, in like monthly installments of \$200 each.

Deponent is advised that her salary for the fiscal year ending June 30, 1925, should have been the sum of \$2,000.00, and for the fiscal year ending June 30, 1926, the sum of \$2,100.00, and for the fiscal year ending June 30, 1927, the sum of \$2,200.00, each of said annual salaries payable in ten equal monthly instalments on the last days of the months of September to June, inclusive.

That there is therefore due the plaintiff in respect of said periods of service the sum of \$600.00, with interest on said monthly instalments, the interest amounting to June 30, 1927, to the sum of \$49.50.

* The basis of deponent's claim is that said Act of June 4, 1924, directed in Article IV, Section 4, paragraphs (c) and (d), that for the year ending June 30, 1925, deponent should receive the salary in the class to which she was assigned next above her then (June 30, 1924) present compensation, that is, \$1,600.00, and, in addition, for the year beginning July 1, 1924, one annual increase of salary of \$100, and that she should be entitled to longevity placement as provided in section 6; and directed in said section 6, paragraph (q) that teachers such as the deponent assigned to class 1 and in the service on July 1, 1924, should receive longevity increase according to their previous number of years of experience in like positions in accredited schools to which they held on July 1, 1924, with the proviso, however, that no teacher should so receive credit for more than four years of experience; prior to the year ending June 30, 1924, deponent had 15 years of experience in teaching in positions in accredited schools like that which she held on July 1, 1924; deponent is advised that the one annual increase directed by Article IV, Section 4, Paragraph (c), to be received by her, was in respect of the year of experience ending June 30, 1924, and deponent was thereby entitled to at least three additional increase- of \$100; making a total of \$2,000.00 for he year beginning July 1, 1924, and ending June 30, 1925.

The further basis of deponent's claim is that it was provided in Article V, Section 7, that teachers such as deponent should receive annual increases of \$100 on July 1, 1925, and thereafter annually without action of the Board of Education.

Wherefore the deponent claims there is due to her from the District of Columbia the sum of Six Hundred Forty-nine Dollars and Fifty Cents (\$649.50), with interest on Six Hundred Dollars (\$600.00) from June 30, 1927, exclusive of all set-offs and just grounds of defense.

(Signed) (MRS.) LASKEY W. JOHNSON.

Subscribed and sworn to before me this 28th day of September, 1927.

[NOTARY SEAL.]

R. S. HARRINGTON,
Notary Public for the District of Columbia.

Bill of Particulars.

(Filed October 31, 1927.)

Balances of salary due from the District of Columbia to the plaintiff for services as teacher in the public schools in respect of periods of teaching during the school years September 1, 1924, to June 30, 1925, September 1, 1925, to June 30, 1926, and September 1, 1926, to June 30, 1927, inclusive, payable in monthly instalments on the last day of each month in respect of each period of teaching, the amount claimed being the aggregate of said monthly balances, as principal, \$600.00, and interest on said monthly
6 balances calculated to June 30, 1927, \$49.50, plus interest on said principal to date of payment.

PEELLE, OGILBY & LESH,
By PAUL E. LESH,
Attorneys for Plaintiff.

Agreed Statement of Facts.

(Filed June 4, 1929.)

It is hereby agreed between the parties hereto, through their respective counsel, that the above entitled cause shall be tried and judgment rendered on the facts hereinafter

set out, an affidavit on the part of the defendant being waived.

The plaintiff herein was appointed a teacher in the public schools of the District of Columbia on October 4, 1920, and thereafter continuously served as such teacher in the salary classes, for the periods of time, and at the salaries, and was given increases and allowances, as set out in the following schedule:

	Basic Salary	Bonus	Lon- gevity
Appointed Teacher, Class 3, 10-4-20—6-30-21....	\$1,200	240	...
Appointed permanent, Class 3, 9-1-21—6-30-22...	1,200	240	25
Class 3, 9-1-22—6-30-23...	1,200	240	50
Class 3, 9-1-23—6-31-24...	1,200	240	75
Promoted to Class 4, 2-1-24—6-30-24.....	1,200	240	90
Promoted to Class 1A, 9-1-24—6-30-25.....	1,400	...	400
Class 1A, 9-1-25—6-30-26.....	1,400	...	500
Class 1A, 9-1-26—6-30-27.....	1,400	...	600
Class 1A, 9-1-27—6-30-28.....	1,400	...	700
Class 1A, 9-1-28—date.....	1,400	...	800

The positions she held on June 30, 1924, and theretofore were positions in accredited schools like which she held on July 1, 1924, and thereafter.

That prior to the appointment and service aforesaid of the plaintiff in the public schools of the District of Columbia, she had eight years of experience in teaching in the public schools of the District of Columbia, which were accredited schools, and in the first to the eighth grades thereof, which were like positions to the positions she held in the public schools of the District of Columbia on July 1, 1924.

She was a teacher on permanent tenure on June 30, 1924, in salary class 4, receiving a salary of \$1,530 per year; that for the fiscal year ending June 30, 1925, she was paid a total salary of \$1,800. That teachers are paid in ten monthly instalments from September to the following June, both inclusive.

That during the first few months of operation under the Act of June 4, 1924, the plaintiff and all other teachers in Group A, Class 1, as the salaries of teachers are classified by that Act, whose salaries had been between \$1,500 and \$1,600 on June 30, 1924, were paid at the rate of \$1,700 per annum, said sum being arrived at by the application of Section 4 of the Act of June 4, 1924. In the course of the school year 1924-1925, a readjustment and re-rating was

made of the salaries of such teachers and, if they had four or more years of experience in teaching prior to July 1, 1924, in accredited schools in like positions to those which they held on July 1, 1924, they were re-rated for the year ending June 30, 1925, at the figure of \$1,800 per annum, arrived at by applying the provisions of Section 6, paragraph (g), of the Act of June 4, 1924, independently of the calculation of their salaries theretofore made under Section 4 of said Act, that is to say, the four longevity increases were added to the basic of \$1,400; and their salaries for the year ending June 30, 1925, were therefore paid at the rate of \$1,800. This original rating at \$1,700 and re-rating at \$1,800 was done in the case of all teachers whose salaries had been on June 30, 1924, between \$1,500 and \$1,600, whether their experience prior to July 1, 1924, had been exclusively in the public schools of the District of Columbia or had been partly in like positions in accredited schools outside the District of Columbia.

That the claim of the plaintiff has not been passed upon, on the merits, by the Comptroller General, that official taking the position that claims for salaries higher than those paid by the administrative officials must be made, if at all, by suit against the District of Columbia, and that his office is not concerned with such claims unless the opinion of his office should be requested by the administrative officials, and the school authorities declined to ask an opinion of the Comptroller General upon the question urged by the claimants having this class of cases.

That the estimates transmitted to Congress for the payment of teachers, including the plaintiff, have not included sums to pay the plaintiff in accordance with her claim made herein, and appropriations were made only sufficient in amount, apparently, to cover said estimates; there remained undisbursed, however, of the appropriations for salaries of teachers for the fiscal years ending June 30, 1925, (an amount not ascertained when this stipulation was signed); 1926, \$58,729.82; 1927, \$147,092.59.

That the official prints of hearings before the Committees of Congress, and the reports on the bill which was enacted as the salary act of June 4, 1924, and the several official prints of that bill made during its pendency, and

the proceedings in the House and Senate, may be considered in evidence, and such extracts therefrom as may be relied on by counsel may be called to the attention of this Court and any appellate court, with like effect as though set out at large in this stipulation.

That the agreements in this stipulation made to the effect that certain facts are true shall not be considered as a concession on the part of either the plaintiff or the defendant that the facts so agreed upon are relevant or material to the solution of the controversy herein.

It is further agreed that if the plaintiff has been correctly paid under the said Act of Congress, the judgment herein to be for the defendant; if not, and her salary should have been as set out in her declaration and affidavit, the judgment is to be for the plaintiff for the sum of Six Hundred Forty-nine Dollars and Fifty Cents (\$649.50), with interest on Six Hundred Dollars (\$600.00) from June 30,

1927; that if some other amount in excess of the amount paid to the plaintiff is found by the Court to be the amount that should have been paid her as salary, the amount of the judgment for the plaintiff shall be such excess as shall be found by the Court.

PEELLE, OGILBY AND LESH,

(Signed) By PAUL E. LESH,

Attorneys for Plaintiff.

(Signed) WILLIAM W. BRIDE,

(Signed) F. H. STEPHENS,

Attorneys for Defendant.

Judgment.

(June 21, 1929. Min. 44, Page 29.)

It appearing under Rule of Court that judgment upon the finding be entered in this cause, it is so ordered. Wherefore, it is considered that the plaintiff take nothing by this action, that the defendant go hence without day, be for nothing held and recover of the plaintiff his costs of defense.

The Assignment of Errors.

(Filed July 3, 1929.)

Comes now the plaintiff, Laskey W. Johnson, by her counsel, and assigns for error:

1. The action of the Court in entering judgment for the defendant herein.

2. The rulings of the Court that plaintiff was not entitled to be paid for the year ending June 30, 1925, the sum of \$2,000 as salary as teacher in the public schools of the District of Columbia, for the year ending June 30, 1926, \$2,100, and for the year ending June 30, 1927, \$2,200, and was not entitled to recover the difference between the amounts paid her and said amounts, that is to say, \$600, with interest on monthly balances to June 30, 1927, amounting to \$49.50, and interest on \$600 from June 30, 1927.

(Signed)

PAUL E. LESH,
Attorney for Plaintiff.

Service acknowledged.

W. W. BRIDE,
F. H. STEPHENS,
Attorneys for Defendant.

10 Filed Jul. 3, 1929, Municipal Court, District of
Columbia.

In the Municipal Court of the District of Columbia.

At Law.

No. A 4438.

LASKEY W. JOHNSON, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Bill of Exceptions.

Be it remembered that the above entitled cause came on for hearing June 4, 1929, in the Municipal Court of the District of Columbia before the Honorable James A. Cobb,

judge of said Municipal Court, upon an agreed statement of facts and certain official prints which were considered in evidence and read in part to the Court, to wit:

1. "Hearings before the sub-committee of the committee on the District of Columbia House of Representatives Sixty-Eighth Congress First Session on H. R. 6576 and H. R. 6721." "March 1 and 3, 1924."

2. A print of H. R. 6721 as reported May 12, 1924, in the Senate which became the Act of June 4, 1924.

3. House of Representatives Report No. 302 of the committee on the District of Columbia of March 14, 1924, "to accompany H. R. 6721," to the House of Representatives.

4. Senate Report No. 521 of the committee on the District of Columbia of May 12, 1924, "to accompany H. R. 6721" to the Senate.

5. Daily Congressional Record, Volume 65, Sixty-Eighth Congress First Session, proceedings in the House of Representatives on March 31, 1924, in the Senate May 12, 1924, and in the House May 27, 1924.

11 A print of said hearing (No. 1 above) in full, and prints of said bill and reports (Nos. 2, 3 and 4 above), from which have been deleted the material portions thereof not relied on by either party, are attached to the bill of exceptions in the case of Marian A. Newman against the District of Columbia, Municipal Court No. A. 4337, Court of Appeals No. 4803, October 1928 term, and reprints of said proceedings in the House and Senate (No. 5 above) were filed in said last mentioned case No. 4803 as an appendix to the brief in support of motion for rehearing, and are referred to and made parts of this bill of exceptions as though spread at large herein.

There was no other evidence.

After argument by counsel and consideration by the Court, it was adjudged that the plaintiff recover nothing of the defendant and that judgment be entered for the defendant for costs, to which ruling and judgment an exception was duly taken by the plaintiff and allowed by the Court, and notice was given of intention to apply to the Court of Appeals for a writ of error to review the proceedings herein.

Given under my hand and seal, now for then, this 3rd day of July, 1929.

JAMES A. COBB.

Form satisfactory:

PAUL E. LESH,
Atty. Plaintiff.

W. W. BRIDE,
F. H. S.
F. H. STEPHENS.

12 Filed Jun. 26, 1929, Municipal Court, District of
Columbia.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable James A. Cobb, Judge of the Municipal Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Municipal Court, before you, between Laskey W. Johnson, Plaintiff, and District of Columbia, Defendant, Law, No. A 4438. a manifest error hath happened, to the great damage of said Plaintiff, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 20 days from the settling of the bill of exceptions, or within such additional time after the expiration of the 20 days as the court below or a judge thereof for sufficient cause shall allow; that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 26th day of June, in the year of our Lord one thousand nine hundred and twenty-nine.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
 of the District of Columbia,*
 By MONCURE BURKE,
Deputy Clerk.

Allowed by
 GEORGE E. MARTIN,
*Chief Justice of the Court of
 Appeals of the District of Columbia.*

[Endorsed:] Filed Jun. 26, 1929, Municipal Court, District of Columbia.

13 *Designation of Record.*

(Filed July 3, 1929.)

The Clerk will please prepare a transcript of the record in the above entitled cause, for the Court of Appeals, including:

1. The declaration, affidavit and bill of particulars.
2. The agreed statement of facts.
3. The judgment.
4. The bill of exceptions.
5. The assignment of errors.
6. This designation.

(Signed)

PAUL E. LESH,
Attorney for Plaintiff.

Service acknowledged.

W. W. BRIDE,
 F. H. STEPHENS,
Attorneys for Defendant.

Municipal Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, num-

bered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to direction of counsel filed herein, copy of which is made part of this transcript, in Cause, At Law, No. A-4438, wherein Laskey W. Johnson is plaintiff, and the District of Columbia is defendant, as the same that remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of July, 1929.

[Seal Municipal Court of the District of Columbia.]

BLANCHE NEFF,

Clerk.

Endorsed on cover: In Error to the Municipal Court of the District of Columbia. No. 5013. Laskey W. Johnson, plaintiff in error, vs. District of Columbia. Court of Appeals, District of Columbia. Filed Jul. 20, 1929. Henry W. Hodges, clerk.

TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia

APRIL TERM, 1929

No. 5014

EVVA M. HERRON, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

FILED JULY 20, 1929.

PRINTED JULY 24, 1929.

With 5013

Court of Appeals of the District of Columbia

APRIL TERM, 1929

No. 5014

EVVA M. HERRON, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA, DEFENDANT IN ERROR.

IN ERROR TO THE MUNICIPAL COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original	Print
Caption	1	1
Declaration	2	1
Affidavit of plaintiff.....	3	3
Bill of particulars.....	5	5
Agreed statement of facts.....	6	5
Judgment	9	8
Assignment of errors.....	9	8
Bill of exceptions.....	10	9
Writ of error.....	12	11
Designation of record.....	13	12
Clerk's certificate.....	13	12

Court of Appeals of the District of Columbia

No. 5014.

EVVA M. HERRON, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA.

1 Municipal Court of the District of Columbia.

At Law.

No. A-4647.

E. M. HERRON, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered that in the Municipal Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

2

Declaration.

(Filed October 31, 1927.)

In the Municipal Court of the District of Columbia.

At Law.

No. A-4647.

E. M. HERRON, Address: 3919 5th St. N. W., Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Declaration.

Plaintiff sues defendant for balances of salary due plaintiff as teacher in the public schools of the District of Co-

lumbia in respect of the periods following, pursuant to the provisions of Act of Congress approved June 4, 1924, Article I, Class 1, Group A, and Article IV; and says plaintiff was on June 30, 1924, a teacher on permanent tenure at an annual salary of \$1,515; that for the fiscal year beginning July 1, 1924, plaintiff was duly assigned to said salary Class 1, Group A, and her service has been satisfactory; that prior to the year ending June 30, 1924, she had 19 years of experience in teaching positions in accredited schools like that which she held on July 1, 1924; and that her claim is as follows:

Period of ten months. school year, end- ing June 30		Salary claimed. in ten equal monthly instal- ments, pursuant to above Act	Salary paid	Balances claimed
1925	Sec. 4, par. (c)	\$1.600		
	plus	100		
	Sec. 4, par. (d)			
	Sec. 6, par. (q)	300		
	Total for year.....	\$2.000	\$1.800	\$200
1926	Rate of previous year.....	\$2.000	\$1.800	
	Sec. 7.....	100	100	
	Total for year.....	\$2.100	\$1.900	\$200
1927	Rate of previous year.....	\$2.100	\$1.900	
	Sec. 7.....	100	100	
	Total for year.....	\$2.200	\$2.000	\$200
	Total principal claim.....			\$600
	Interest on monthly balances to June 30, 1927.....			49.50
	Wherefore she brings this suit and claims.....			\$649.50
	with interest on \$600.00 from June 30, 1927.			

(Signed)

PEELLE, OGILBY & LESH,
PAUL E. LESH,
Attorneys for Plaintiff.

3

Affidavit of Plaintiff.

(Filed October 31, 1927.)

In the Municipal Court of the District of Columbia.

At Law.

No. A-4647.

E. M. HERRON, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Affidavit of Plaintiff.

DISTRICT OF COLUMBIA, ss:

E. M. Herron, being first duly sworn, deposes and says that she is the plaintiff in the above entitled case, and has a just cause of action against the defendant, the District of Columbia, upon the following grounds:

Deponent was during the school year ending June 30, 1924, a teacher in the public schools of the District of Columbia, on permanent tenure in salary class 2, as the salaries of teachers are classified according to the Act of Congress approved June 20, 1906, and amendments thereto known as the Organic School Act, then in force. That deponent thereafter continuously remained during the periods herein mentioned a teacher in the said public schools, and has, since her original appointment therein, rendered satisfactory service.

That for the year ending June 30, 1924, deponent received a basic salary of \$1,200, pursuant to said Organic Act as amended, and a bonus of \$240, pursuant to the Acts of Congress applicable to teachers and many other civil employees of the government, plus three annual increase, for prior service, of \$25, a total annual salary of \$1,515.

That during the fiscal year ending June 30, 1925, deponent was duly assigned to Group A, Class 1, as the salaries of teachers are classified by the Act of Congress approved June 4, 1924.

Deponent was paid during the fiscal year ending June 30, 1925, as salary, the sum of \$1,800 in ten monthly instal-

ments of \$180 each, paid and payable the last days
4 of September to June, inclusive; and during the fiscal year ending June 30, 1926, \$1,900, in like monthly instalments of \$190 each; and during the fiscal year ending June 30, 1927, \$2,000, in like monthly instalments of \$200 each.

Deponent is advised that her salary for the fiscal year ending June 30, 1925, should have been the sum of \$2,000, and for the fiscal year ending June 30, 1926, the sum of \$2,100, and for the fiscal year ending June 30, 1927, the sum of \$2,200, each of said annual salaries payable in ten equal monthly instalments on the last days of the months of September to June, inclusive.

That there is therefore due the plaintiff in respect of said periods of service the sum of \$600, with interest on said monthly instalments, the interest amounting to June 30, 1927, to the sum of \$49.50.

The basis of deponent's claim is that said Act of June 4, 1924, directed in Article IV, Section 4, paragraphs (c) and (d), that for the year ending June 30, 1925, deponent should receive the salary in the class to which she was assigned next above her then (June 30, 1924) present compensation, that is, \$1,600, and, in addition, for the year beginning July 1, 1924, one annual increase of salary of \$100, and that she should be entitled to longevity placement as provided in section 6; and directed in said section 6, paragraph (g) that teachers such as the deponent assigned to class 1 and in the service on July 1, 1924, should receive longevity increase according to their previous number of years of experience in like positions in accredited schools to which they held on July 1, 1924, with the proviso, however, that no teacher should so receive credit for more than four years of experience; prior to the year ending June 30, 1924, deponent had 19 years of experience in teaching in positions in accredited schools like that which she held on July 1, 1924; deponent is advised that the one annual increase directed by Article IV, Section 4, Paragraph (c), to be received by her, was in respect of the year
5 of experience ending June 30, 1924, and deponent was thereby entitled to at least three additional increase- of \$100; making a total of \$2,000 for the year beginning July 1, 1924, and ending June 30, 1925.

The further basis of deponent's claim is that it was provided in Article V, Section 7, that teachers such as deponent should receive annual increases of \$100 on July 1, 1925, and thereafter annually without action of the Board of Education.

Wherefore the deponent claims there is due to her from the District of Columbia the sum of Six Hundred Forty-nine dollars and fifty cents (\$649.50), with interest on Six hundred dollars (\$600) from June 30, 1927, exclusive of all set-offs and just grounds of defense.

(Signed)

E. M. HERRON.

Subscribed and sworn to before me this 29th day of September, 1927.

[NOTARY SEAL.]

JEAN SPEAKS,

Notary Public for the District of Columbia.

Bill of Particulars.

(Filed October 31, 1927.)

Balances of salary due from the District of Columbia to the plaintiff for services as teacher in the public schools in respect of periods of teaching during the school years September 1, 1924, to June 30, 1925, September 1, 1925 to June 30, 1926, September 1, 1926, to June 30, 1927, inclusive, payable in monthly instalments on the last day of each month in respect of each period of teaching, the amount claimed being the aggregate of said monthly balances, as principal, \$600.00, and interest on said monthly balances calculated to June 30, 1927, \$49.50, plus interest on said principal to date of payment.

6

PEELLE, OGILBY AND LESH,

By PAUL E. LESH,

Attorneys for Plaintiff.

Agreed Statement of Facts.

(Filed June 4, 1929.)

It is hereby agreed between the parties hereto, through their respective counsel, that the above entitled cause shall be tried and judgment rendered on the facts hereinafter set out, an affidavit on the part of the defendant being waived.

The plaintiff herein was appointed a teacher in the public schools of the District of Columbia on September 1, 1920, and thereafter continuously served as such teacher in the salary classes, for the periods of time, and at the salaries, and was given increases and allowances, as set out in the following schedule:

	Basic Salary	Bonus	Lon- gevity
Appointed Teacher, Class 2, 9-1-20—6-30-21.....	\$1,200	240	...
Appointed permanent, Class 2, 9-1-21—6-30-22...	1,200	240	25
Class 2, 9-1-22—6-30-23...	1,200	240	50
Class 2, 9-1-23—6-30-24...	1,200	240	75
Promoted to Class 1A, 9-1-24—6-30-25.....	1,400	...	400
Class 1A, 9-1-25—6-30-26.....	1,400	...	500
Class 1A, 9-1-26—6-30-27.....	1,400	...	600
Class 1A, 9-1-27—6-30-28.....	1,400	...	700
Class 1A, 9-1-28—date.....	1,400	...	800

The positions she held on June 30, 1924, and theretofore were positions in accredited schools like which she held on July 1, 1924, and thereafter.

That prior to the appointment and service aforesaid of the plaintiff in the public schools of the District of Columbia, she had fifteen years of experience in teaching in the public schools of Allegheny County, Pennsylvania, which were accredited schools, and in the first to the eighth grades thereof, which were like positions to the positions she held in the public schools of the District of Columbia on July 1, 1924.

She was a teacher on permanent tenure on June 30, 1924, in salary class 2, receiving a salary of \$1,515 per year; that for the fiscal year ending June 30, 1925, she was paid a total salary of \$1,800. That teachers are paid in ten monthly instalments from September to the following June, both inclusive.

That during the first few months of operation under the Act of June 4, 1924, the plaintiff and all other teachers in Group A, Class 1, as the salaries of teachers are classified by that Act, whose salaries had been between \$1,500 and \$1,600 on June 30, 1924, were paid at the rate of \$1,700 per annum, said sum being arrived at by the application of Section 4 of the Act of June 4, 1924. In the course of the school year 1924-1925, a readjustment and re-rating was made of the salaries of such teachers and, if they had four or more years of experience in teaching prior to July 1, 1924, in accredited schools in like positions to those which they held

on July 1, 1924, they were re-rated for the year ending June 30, 1925, at the figure of \$1,800 per annum, arrived at by applying the provisions of Section 6, paragraph (q), of the Act of June 4, 1924, independently of the calculation of their salaries theretofore made under Section 4 of said Act, that is to say, the four longevity increases were added to the basic of \$1,400; and their salaries for the year ending June 30, 1925, were therefore paid at the rate of \$1,800. This original rating at \$1,700 and re-rating at \$1,800 was done in the case of all teachers whose salaries had been on June 30, 1924, between \$1,500 and \$1,600, whether their experience prior to July 1, 1924, had been exclusively in the public schools of the District of Columbia or had been partly in like positions in accredited schools outside the District of Columbia.

That the claim of the plaintiff has not been passed upon, on the merits, by the Comptroller General, that official taking the position that claims for salaries higher than
8 those paid by the administrative officials must be made, if at all, by suit against the District of Columbia, and that his office is not concerned with such claims unless the opinion of his office should be requested by the administrative officials, and the school authorities declined to ask an opinion of the Comptroller General upon the question urged by the claimants having this class of cases.

That the estimates transmitted to Congress for the payment of teachers, including the plaintiff, have not included sums to pay the plaintiff in accordance with her claim made herein, and appropriations were made only sufficient in amount, apparently, to cover said estimates; there remained undisbursed, however, of the appropriations for salaries of teachers for the fiscal years ending June 30, 1925, (an amount not ascertained when this stipulation was signed); 1926, \$59,729.82; 1927, \$147,092.59.

That the official prints of hearings before the Committees of Congress, and the reports on the bill which was enacted as the salary act of June 4, 1924, and the several official prints of that bill made during its pendency, and the proceedings in the House and Senate, may be considered in evidence, and such extracts therefrom as may be relied on by counsel may be called to the attention of this Court and any appellate court, with like effect as though set out at large in this stipulation.

That the agreements in this stipulation made to the effect that certain facts are true shall not be considered as a concession on the part of either the plaintiff or the defendant that the facts so agreed upon are relevant or material to the solution of the controversy herein.

It is further agreed that if the plaintiff has been correctly paid under the said Act of Congress, the judgment herein is to be for the defendant; if not, and her salary should have been as set out in her declaration and affidavit, the judgment is to be for the plaintiff for the sum of Six Hundred Forty-nine Dollars and Fifty Cents (\$649.50), with interest on Six Hundred Dollars (\$600.00) from June 30, 1927; that if some other amount in excess of the amount paid to the plaintiff is found by the Court to be the amount that should have been paid her as salary, the amount of the judgment for the plaintiff shall be such excess as shall be found by the Court.

PEELLE, OGILBY AND LESH,
(Signed) By PAUL E. LESH,
Attorneys for Plaintiff.

(Signed) WILLIAM W. BRIDE,
(Signed) F. H. STEPHENS,
Attorneys for Defendant.

Judgment.

(June 21, 1929. Min. 44, Page 29.)

It appearing under Rule of Court that judgment on finding be entered in this cause, it is so ordered. Wherefore, it is considered that plaintiff take nothing by this action, that defendant go hence without day, be for nothing held, and recover of plaintiff his costs of defense.

Assignment of Errors.

(Filed July 3, 1929.)

Comes now the plaintiff, Evva M. Herron, by her counsel, and assigns for error:

1. The action of the Court in entering judgment for the defendant herein.

2. The rulings of the Court that plaintiff was not entitled to be paid for the year ending June 30, 1925, the sum of \$2,000 as salary as teacher in the public schools of the District of Columbia, for the year ending June 30, 1926, \$2,100, and for the year ending June 30, 1927, \$2,200, and was not entitled to recover the difference between the amounts paid her and said amounts, that is to say, \$600, with interest on monthly balances to June 30, 1927, amounting to \$49.50, and interest on \$600 from June 30, 1927.

PAUL E. LESH,
Attorney for Plaintiff.

Service acknowledged.

W. W. BRIDE,
F. H. STEPHENS,
Attorneys for Defendant.

10 Filed Jul. 3, 1929, Municipal Court, District of
Columbia.

In the Municipal Court of the District of Columbia.

At Law.

No. A-4647

EVVA M. HERRON, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

Bill of Exceptions.

Be it remembered that the above entitled cause came on for hearing June 4, 1929, in the Municipal Court of the District of Columbia before the Honorable James A. Cobb, judge of said Municipal Court, upon an agreed statement of facts and certain official prints which were considered in evidence and read in part to the Court, to wit:

1. "Hearings before the sub-committee of the committee on the District of Columbia House of Representatives Sixty-Eighth Congress First Session on H. R. 6576 and H. R. 6721." "March 1 and 3, 1924".

2. A print of H. R. 6721 as reported May 12, 1924, in the Senate which became the Act of June 4, 1924.

3. House of Representatives Report No. 302 of the committee on the District of Columbia of March 14, 1924, "to accompany H. R. 6721", to the House of Representatives.

4. Senate Report No. 521 of the committee on the District of Columbia of May 12, 1924, "to accompany H. R. 6721" to the Senate.

5. Daily Congressional Record, Volume 65, Sixty-Eighth Congress First Session, proceedings in the House of Representatives on March 31, 1924, in the Senate May 12, 1924, and in the House May 27, 1924.

11 A print of said hearing (No. 1 above) in full, and prints of said bill and reports (Nos. 2, 3 and 4 above), from which have been deleted the material portions thereof not relied on by either party, are attached to the bill of exceptions in the case of Marian A. Newman against the District of Columbia, Municipal Court No. A-4337, Court of Appeals No. 4803, October 1928 term, and reprints of said proceedings in the House and Senate (No. 5 above) were filed in said last mentioned case No. 4803 as an appendix to the brief in support of motion for rehearing, and are referred to and made parts of this bill of exceptions as though spread at large herein.

There was no other evidence.

After argument by counsel and consideration by the Court, it was adjudged that the plaintiff recover nothing of the defendant and that judgment be entered for the defendant for costs, to which ruling and judgment an exception was duly taken by the plaintiff and allowed by the Court, and notice was given of intention to apply to the Court of Appeals for a writ of error to review the proceedings herein.

Given under my hand and seal, now for then, this 3rd day of July, 1929.

JAMES A. COBB.

Form satisfactory:

PAUL E. LESH,

Atty. Plaintiff.

W. W. BRIDE,

F. H. S.,

F. H. STEPHENS,

Attys. for Deft.

12 Filed Jun. 26, 1929, Municipal Court, District of
Columbia.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable James
A. Cobb, Judge of the Municipal Court of the District of
Columbia,

Greeting:

Because in the record and proceedings, as also in the
rendition of the judgment of a plea which is in the said
Municipal Court, before you, between Evva M. Herron,
Plaintiff, and District of Columbia, Defendant, Law, No.
A-4647, a manifest error hath happened, to the great dam-
age of the said Plaintiff, as by her complaint appears. We
being willing that error, if any hath been, should be duly
corrected, and full and speedy justice done to the parties
aforesaid in this behalf, do command you, if judgment be
therein given, that then, under your seal, distinctly and
openly, you send the record and proceedings aforesaid, with
all things concerning the same, to the Court of Appeals of
the District of Columbia, together with this writ, so that
you have the same in the said Court of Appeals, at Wash-
ington, within 20 days from the settling of the bill of ex-
ceptions, or within such additional time after the expira-
tion of the 20 days as the court below or a judge thereof
for sufficient cause shall allow; that the record and pro-
ceedings aforesaid being inspected, the said Court of Ap-
peals may cause further to be done therein to correct that
error, what of right and according to the laws and customs
of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice
of the said Court of Appeals, the 26th day of June, in the
year of our Lord one thousand nine hundred and twenty-
nine.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia,
By MONCURE BURKE,
Deputy Clerk.

Allowed by

GEORGE E. MARTIN,

Chief Justice of the Court of

Appeals of the District of Columbia.

[Endorsed:] Filed Jun. 26, 1929, Municipal Court, District of Columbia.

13

Designation of Record.

(Filed July 3, 1929.)

The Clerk will please prepare a transcript of the record in the above entitled cause, for the Court of Appeals, including:

1. The declaration, affidavit and bill of particulars.
2. The agreed statement of facts.
3. The judgment.
4. The bill of exceptions.
5. The assignment of errors.
6. This designation.

(Signed)

PAUL E. LESH,
Attorney for Plaintiff.

Service acknowledged.

W. W. BRIDE,

F. H. STEPHENS,

Attorneys for Defendant.

Municipal Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, Blanche Neff, Clerk of the Municipal Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to direction of counsel herein filed, copy of which is made part of this transcript, in Cause, At Law, No. A-4647, wherein Evva M. Herron, is plaintiff, and District of Columbia, is defendant, as the same that remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of July, 1929.

[Seal Municipal Court of the District of Columbia.]

BLANCHE NEFF,

Clerk.

Endorsed on cover: In error to the Municipal Court of the District of Columbia. No. 5014. Evva M. Herron, plaintiff in error, vs. District of Columbia. Court of Appeals, District of Columbia. Filed Jul. 20, 1929. Henry W. Hodges, clerk.

(8633)

AUG 31 1929

Henry W. Hodges

clerk,

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1929.

LASKEY W. JOHNSON
vs.
DISTRICT OF COLUMBIA.

No. 5013.

EVVA M. HERRON
vs.
DISTRICT OF COLUMBIA.

No. 5014.

BRIEF FOR PLAINTIFFS IN ERROR.

PAUL E. LESH,
Attorney for Appellees.

PEELLE, OGILBY & LESH,
Of Counsel.

August 16, 1929.

SUBJECT INDEX.

	Page
STATEMENT.....	1
The Statute.....	1
The Facts.....	3
ARGUMENT	6
Legislative History.....	6
The Issues Here Involved.....	10
Legislative Incidents While the Bill Was Pending.....	12
The Committee Discussions and Reports....	12
The Proceedings in the House and Senate	16
Statute Applied to Pending Cases.....	23
Teachers of Experience Outside the District Were Not Exclusively Dealt with in Section 6, Par. (g).....	27
The Phrase "In Accredited Schools," Etc.	29
Phraseology Compared with Prior Statutes	31
The Past Credit Under Old Statute No Bar to Present Credit Under New Act.....	32
Further Comparison with Former Longev- ity Credit Acts.....	34
Congress Did Not Intend to Discriminate Against Local Teachers.....	36
Legislation to Equalize Position of Teach- ers of Outside Experience Would Have Differed from Present Act.....	39
The Statute's Supposed Ambiguity.....	40
School Salaries Are Fixed by Law.....	43
Contrary Contentions Summarized.....	46
The Newman Opinion Applied to the Several Cases	48
CONCLUSION	50

INDEX.

Table of Cases Cited.

	Page
D. C. <i>vs.</i> Gardner, 54 App. D. C., 390.....	45
D. C. <i>vs.</i> Marsh, 47 App. D. C., 59.....	44
D. C. <i>vs.</i> Martin, 34 App. D. C., 265.....	45
Myers <i>vs.</i> D. C., 25 App. D. C., 132.....	44
U. S. <i>vs.</i> Mo. P. R. Co., Advance Sheets, decided January 2, 1929, 73 L. Ed., 136, 139.....	41
Van Camp & Sons Co. <i>vs.</i> American Can Co., Advance Sheets, decided January 2, 1929, 73 L. Ed., 145, 147.....	41
Wisc. Railroad Commission <i>vs.</i> Chicago B. & Q. R. R., 257 U. S., 563, 589, 66 L. Ed., 371, 383.....	43
Work <i>vs.</i> U. S. ex rel. Rives, 54 App. D. C., 84, 86....	43

Table of Statutes Cited.

Acts of Congress approved

June 20, 1906; 34 Stats., 316, Old Salary Act....	1, 6, 16, 46
May 26, 1908; 35 Stats., 289, granting longevity credit	27, 31, 34, 36, 45
May 18, 1910; 36 Stats., 393, granting longevity credit	31, 34, 35, 36
June 26, 1912; 37 Stats., 156, granting longevity credit.....	31, 36
August 31, 1918; 40 Stats., 932, increasing basic compensation.....	8, 25
July 11, 1919; 41 Stats., 81, increasing basic compensation	8, 25
June 5, 1920; 41 Stats., 837, 851, increasing basic compensation.....	8
March 4, 1923; 42 Stats., 1557, "bonus" pay....	8
June 4, 1924; 43 Stats., 367, here in question....	1, 4, 8, 23, 31, 35

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1929.

LASKEY W. JOHNSON

vs.

DISTRICT OF COLUMBIA.

No. 5013.

EVVA M. HERRON

vs.

DISTRICT OF COLUMBIA.

No. 5014.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

The Statute.

The matter here in controversy is the construction of the Act of June 4, 1924 (43 Stats. 367), an Act to amend the Act entitled "An Act to fix and regulate the salaries of teachers, school officers and other employees of the Board of Education of the District of Columbia," approved June 20, 1906 (34 Stats. 316), as

amended. The relevant portions of the statute are as follows:

“That on and after July 1, 1924, the salaries of teachers, school officers, and other employees of the Board of Education of the District of Columbia shall be as follows”:

“Class 1.—Teachers in Kindergartens and Elementary Schools.

“Group A.—A basic salary of \$1,400 per year, with an annual increase in salary of \$100 for eight years, or until a maximum of \$2,200 per year is reached.”

“Sec. 4. That for the fiscal year ending June 30, 1925, every teacher, school officer, or other employee in the service of the Board of Education on permanent tenure on June 30, 1924, shall receive the salary provided in the foregoing schedule for his class or position in accordance with the following rules”:

“(c) All other teachers and school librarians assigned to Group A of the salary classes in the foregoing schedule shall receive the salary in the classes to which assigned which is next above their present compensations and in addition shall receive one annual increase of salary of \$100 as provided in the foregoing schedule.

“(d) . . . *Provided*, That under the provisions of this section the present compensation of any teacher, school officer, or other employee shall be construed to include basic salary, longevity allowance, session-room allowance, and increase of compensation (bonus): *Provided further*, That teachers and other employees assigned to classes 1, 2, 3, and 4 in the foregoing schedule shall be entitled to longevity placements as provided in section 6”:

“Sec. 6. That teachers, school officers, and other

employees in the service of the Board of Education on July 1, 1924, shall be placed in the salary classes and positions of the foregoing schedule as follows”:

“(q) . . . *Provided further*, That . . . all teachers and other employees assigned to classes 1, 2, 3, and 4 of the foregoing schedule in the service of the said board on July 1, 1924, or thereafter appointed shall receive their longevity increase according to their previous number of years of experience in teaching in like positions in accredited schools to those which they hold on July 1, 1924, or to which they may thereafter be appointed” . . .

“*Provided further*, That no teacher or other employee shall be placed in the salary schedule for more than the fourth year of experience in classes 1, 2, Group A, . . .”

The Facts.

This Act was effective July 1, 1924.

On June 30, 1924, Evva M. Herron was a graded school teacher receiving a salary of \$1,515 per annum; Laskey W. Johnson was a graded school teacher receiving a salary of \$1,530 per annum.

The salary of Evva M. Herron was made up of \$1,200 basic, \$240 bonus and \$75 longevity (Record 5014, p. 6).

The salary of Laskey W. Johnson was made up of \$1,200 basic, \$240 bonus and \$90 longevity (Record 5013, p. 6).

Evva M. Herron had been appointed as teacher in the public graded schools of the District of Columbia on September 1, 1920, and Laskey W. Johnson had been appointed on October 4, 1920, and each had served thereafter continuously. The difference of \$15 per year in their salaries had been caused by the promo-

tion of Laskey W. Johnson on February 1, 1924, to Class 4, in which class the salaries were slightly higher than those in Classes 2 and 3 under the old Act in which both teachers had theretofore been. Under the new Act, both teachers fell into Group A, Class 1 (Records, pp. 6), and the difference of \$15 between their old salaries is wholly immaterial in all respects in this controversy.

Under the new Act, that is, for the year ending June 30, 1925, both teachers were at first paid at the rate of \$1,700 per year, the rate indicated by an application of Section 4 of the Act of June 4, 1924, as though Section 6 were not in the Act. Later in this school year the salaries of both teachers were corrected or changed to \$1,800 per year, arrived at by applying the provisions of Section 6, paragraph (q), of the Act of June 4, 1924, as though Section 4 were not in said Act (Records, pp. 6-7).

Both teachers claim that their salaries for that year ending June 30, 1925, should have been fixed at \$2,000 per annum, arrived at by applying the provisions of Section 4 and also the provisions of Section 6, paragraph (q), of said Act of June 4, 1924 (Records, pp. 4, 8).

The difference between the qualifications for salary based on experience of these two teachers was that Evva M. Herron, prior to her appointment and service aforesaid in the public schools of the District of Columbia, had fifteen years of experience in teaching in the public schools of Allegheny County, Pennsylvania, whereas prior to the appointment and service aforesaid of Laskey W. Johnson, she had eight years of experience in teaching in the public schools of the District of Columbia. It is stipulated that the schools in which both teachers taught prior to their appointments

and consecutive service above described were accredited schools, and they served in the first to the eighth grades thereof in positions like the positions which they held in the public schools of the District of Columbia on July 1, 1924 (Records, pp. 6).

Judgments were entered for the defendant in both cases upon the supposed authority of the opinion of this Court (not yet made final, motion for rehearing being undisposed of) in District of Columbia vs. Marian A. Newman, No. 4803, January, 1929, term.

This opinion would justify a separate contention on behalf of Evva M. Herron, who had experience outside of the District of Columbia, to the effect that she should be allowed credit under Section 6, paragraph (q), for such experience, because some of her experience had been in other school systems for which no longevity credit had been given her.

Counsel for plaintiffs in error do not have confidence, however, in this contention on behalf of Evva M. Herron, for the reason that said opinion has not been made final and counsel do not believe that this Court will finally construe the act in question as would be indicated by that opinion. Counsel do not believe that this Court will upon reconsideration sanction a construction of the Act which will result in discrimination against teachers whose experience has been wholly within the District of Columbia in favor of teachers whose experience has been partly elsewhere.

Both cases were disposed of by the Court below upon the theory that the Newman case was authority against plaintiffs' contentions, by the same judge who had decided the Newman case for the plaintiff; and, of course, against the Court's personal opinion.

With all deference to the first opinion of this Court, as expressed in the Newman case, we believe sufficient

new matter is brought forward with these cases to permit us to present them as though the Newman case were not yet authoritative; and this brief is intended to persuade to a reconsideration of the Newman opinion.

ARGUMENT.

Legislative History.

All Statutes relating to salaries of teachers since 1906 have been by way of amendment to the Act of June 20, 1906, 34 Stats. 316. That Statute provided for certain fixed basic salaries and also for additions to those basic salaries, which additions have come to be known as longevity pay, though this pay has never been strictly longevity, that is, it has never been confined to the sum of annual increases for continued service.

The system of placing a teacher at an advanced position in the salary schedule, advanced in the sense of including in her salary several longevity increments, without regard to whether the teacher had actually served the number of years called for by the number of longevity increments, had long been recognized.

The original Act of 1906 provided (Section 6) that for the year ending June 30, 1907, each teacher should receive the salary in his class next above his then present salary. The only flexible portion in the salary was the longevity portion of it, as the basic salary was rigidly fixed for each class. Therefore, the initial "longevity" was not necessarily the product of the rate multiplied by the number of years of service. Similarly, it was provided (Section 6), that when a teacher should be promoted, he should receive the

salary in the class to which promoted next above the salary from which he was promoted, and such adjustments were necessarily made by allotting additional "longevity" pay (see *District of Columbia vs. Gardner*, *infra*, p. 45).

The original salary Act of June 20, 1906, contained (Section 4) the following schedule of salaries (the first figure in each column has come to be called the "basic" salary for the class, though referred to in the Act (Section 6) as the "minimum" salary; and the additional figures in each column are "longevity" pay):

TEACHERS

<i>Class 1</i>	<i>Class 2</i>	<i>Class 3</i>	<i>Class 4</i>	<i>Class 5</i>	<i>Class 6</i>	
\$500	\$600	\$650	\$800	\$950	\$1,000	Group A
525	625	675	830	990	1,000	
550	650	700	860	1,030	1,100	
575	675	725	890	1,070	1,200	
600	700	750	920	1,110	1,300	
		775	950	1,150	1,400	
		800	980	1,190	1,500	
		825	1,010	1,230	1,600	
		850	1,040	1,270	1,700	
		875	1,070	1,310	1,800	
		900	1,100	1,350		Group B
					1,900	
					2,000	
					2,100	
					2,200	

These graded school teachers were in Classes 1 to 5.

The basic salaries of these several classes have been from time to time increased, but the longevity portion of the salary was not increased between 1906 and 1924, nor until the passage of the Act here in question.

Thus the Act of 1906 provided for basic salaries as

follows: Class 1, \$500; Class 2, \$600; Class 3, \$650; Class 4, \$800; Class 5, \$950.

The amendatory Act of August 31, 1918 (40 Stats. 932), increased the basic salaries as follows: Classes 1, 2 and 3, \$750. This Act left the longevity increases unchanged, that is, provided for four increases of \$25 each in Classes 1 and 2, ten increases of \$25 each in Class 3, ten increases of \$30 each in Class 4, and ten increases of \$40 each in Class 5.

The Act of July 11, 1919 (41 Stats. 81), increased the basic salaries in Classes 1 to 3 to \$860, in Class 4 to \$900, and in Class 5 to \$1,000. This Act also left the so-called longevity portion of the pay unchanged.

The Act of June 5, 1920 (41 Stats. 837, 851), increased the basic salaries in Classes 1 to 5 to \$1,200, leaving the longevity portion of the pay unchanged.

The "bonus" statutes, which were made applicable to teachers as well as to other civil employees of the Government, were in effect additions to the basic salary. The bonus statute, at the time the Act here in controversy was passed, provided for a flat addition of \$240 (Act of March 4, 1923, 42 Stats. 1557), so that when the Act here in question was passed the basic salaries in these five groups of graded school teachers were a total of \$1,440, but the longevity portions of these teachers' salaries remained at the disproportionately small figures fixed by the original Act of June 20, 1906.

The Act of June 4, 1924, here in question, was quite different. Instead of raising the basic salary of these graded school teachers, it actually lowered the basic salary from \$1,440 to \$1,400. It increased, however, the longevity increments to \$100, and fixed their number at eight. This increase was substantial not only because of the great difference between \$40, \$30 and

\$25, on the one hand, and \$100 on the other, but because there were eight such increments in the new salary schedule for all graded school teachers, giving an opportunity for a rating under the new Act at any even \$100 from \$1,400 to \$2,200, inclusive. It will be remembered that in the old salary schedules teachers in classes 1 and 2 were given only four increases (of \$25 each), contrasted with eight increases (of \$100 each).

An increased rate of longevity increment to operate in the future, however, would have been no present increase of salary to the teachers then and for a long time in the service. The well known intention of the bill was to increase substantially the salaries of such school teachers; in fact the bill was known as the teachers' salary bill, and the teachers so referred to were the teachers in the system. And so, as in the case of the former salary bill, its rates above the minimum were not reserved for the future, to be earned one at a time by service rendered after the bill went into effect. Congress provided liberally with regard to the placing of teachers who were already in the system into the new salary schedule, so that the bill would actually operate to increase substantially the salaries of the teachers then in the system.

This was accomplished by making the placing of a teacher already in the system in the new salary schedule dependent upon two elements: First, the rate of salary which the teacher had been receiving, called her "present" compensation; and second, the amount of longevity at the increased rate which could be allotted to a teacher by reason of her prior service. The former provisions were embodied in Section 4 of the Act, and the latter in Section 6, paragraph (q).

In its detailed directions in Section 4 of the bill,

Congress left no doubt as to its intended liberality in the matter of placement. The "present" compensation of graded school teachers in the service whose prior service had been in the schools of the District of Columbia included longevity pay. Congress expressly indicated its especial desire that they should not fail to keep under the new Act such advanced position as they had under the old Act, by analyzing in the Statute "present" compensation, and directing that it should be calculated by including "longevity pay." The result of this calculation was used to determine an entering rate, and it was provided further in Section 4 that these graded school teachers should have the benefit of longevity pay at the new rate as provided in Section 6 of the Act.

In the paragraph of Section 6 so referred to, prior service in like positions was made the basis of a further addition to salary, of course at the new rate of \$100 per year, up to four years.

It is apparent that the prior service of a teacher *might* have so increased the "present" compensation as to affect the salary calculated under Section 4, and *invariably* the length of prior service would affect the longevity calculation under Section 6 up to the limit of four years.

It was by virtue of these liberal provisions for placement above the minimum in the new salary schedule that the bill would operate to accomplish its purpose of increasing substantially the salaries of teachers already in the system, whose basic salaries were by the bill actually reduced.

The Issues Here Involved.

The plaintiffs in error are claiming the intended benefit of the Statute and contend that both Section

4 of the Act and Section 6, paragraph (q) of the Act are applicable and must be given effect in fixing their salaries.

The District of Columbia, as above noted, first fixed their salaries in accordance with Section 4 of the Act, disregarding Section 6, and then later within the first year of the operation of the Statute (Records, pp. 6 to 7), refixed their salaries by applying Section 6, paragraph (q) of the Act, withdrawing, however, the benefit of Section 4 of the Act; thus treating the two sections as alternative.

The opinion of this Court in the Newman case holds, as we understand it, that Section 4 and Section 6 are not alternative, and that both can be given effect, and therefore that Section 4 of the act is applicable to all teachers then in the service, but holds that Section 6, paragraph (q), is applicable only to teachers who have had service outside of the District of Columbia, and therefore with respect to the plaintiffs in error applicable to Evva M. Herron but not to Laskey W. Johnson.

Contrary to the action the District of Columbia has taken in fixing salaries, the plaintiffs in error understand the Statute to direct that the benefit of Section 6 shall be granted to teachers who have been accorded an entering rate above the minimum pursuant to Section 6; and contrary to our understanding of the Newman opinion, plaintiffs in error read the Statute to authorize and direct longevity credit at the increased rates of the new act under Section 6, paragraph (q) for all prior service in like positions in accredited schools without regard to whether those schools are those of the District of Columbia or of other jurisdictions.

Legislative Incidents While the Bill Was Pending.

It is our position that the act is plain and unambiguous, and that reference need not be had to the incidents before the Committees or on the floor of the houses of Congress to ascertain its meaning. Nevertheless, what did actually happen strongly supports the plain construction of the Statute contended for by the plaintiffs in error.

The discussions before the *Committees* of Congress, so far as they are in print, seem to have related principally to Section 4 of the bill. The discussions on the *floor* of the *House* had to do with Section 6 of the bill. And what is, we respectfully submit, of much greater significance, amendments were made on the floor of the House and the Senate which plainly indicate the understanding of Congress as to the intended effect of Section 6, paragraph (q), of the bill. *These discussions and amendments on the floor of the House and the Senate were not before this Court when the Newman case was heard.*

The Committee Discussions and Reports.

The portion of the House Committee Report (and the Senate Committee report is indetical) which appears to have created the most misunderstanding and difficulty is that which appears as quoted matter on pp. 7 to 8 of H. R. No. 302, 68th Congress, 1st Session, being a memorandum prepared by the Superintendent of Schools "to show how Section 4 of the bill provides for the adjustment of present salaries into the new schedule," and consisting of three paragraphs of explanation appended to a boxed schedule.

How it happened that this memorandum of the Superintendent of Schools, directed as it was exclusively

to the effect of Section 4 of the bill, came to be furnished to the House Committee and included in its report does not appear, though the hearings before the House Committee, including the testimony of the Superintendent of Schools and numerous schedules furnished by him and requests for additional information made of him by the Committee, are all parts of the record before this Court, being included in the printed report of the hearings before the sub-committee on the District of Columbia, March 1 and 3, 1924, included as pages 29 to 111 of the transcript of record in *District of Columbia vs. Newman*, No. 4803.

Again we caution the Court that the reprint of the House Committee report (and the Senate Committee report is identical) contained in the record in the *Newman* case is misleading. To conform to the original print, which has been filed with the Court, everything on page 23 and the three paragraphs of explanation on page 24, should be in the fine print which indicates, in Congressional documents, inserted and quoted matter, all of the foregoing being the memorandum described at the foot of page 22 of the record (in 4803).

It is, of course, admitted by plaintiffs in error that according to Section 4, as set out in this memorandum of the Superintendent of Schools so included in the Committee report, and disregarding Section 6, Marian A. Newman would receive for the first year under the new Act only \$1,800, the amount actually paid her. Likewise, according to this memorandum, and disregarding Section 6, both of the plaintiffs in error in the present cases would have been paid for the first year under the new Statute \$1,700. The existence of this memorandum in the Committee report or the theory of its author is doubtless the explanation of the payment to plaintiffs of only \$1,700 as their salaries

were first computed under the new Act, this rate being arrived at by the application of Section 4 alone (Records, pp. 6). It was apparently only after someone in the Accounting Department of the District Government recognized the fact that Section 6, paragraph q, must be taken into account in fixing the salaries of these teachers, that their salaries were rerated at \$1,800 for this first year under the new Act (Records, pp. 7). The Court will not fail to observe that the rate at which they were finally paid was \$100 in excess of the rates set out in this memorandum of the Superintendent of Schools, so it is apparent that the District does not consider the memorandum a true statement of the effect of the entire Statute, having doubtless discovered for itself that the memorandum deals only with Section 4.

Elsewhere in the Committee report, Section 6 of the Act is explained, and it is expressly recognized that Section 6 applies to "employees now in the service" of the District of Columbia schools (H. R. No. 302, 68th Congress, 1st Session, p. 8, reprint in Record No. 4803, p. 25).

There is not in either of the Committee reports a statement or a suggestion that Section 4 and Section 6 are alternative. Such a suggestion, and none other, would be of assistance to the District of Columbia in the construction it has placed upon the Statute.

Nor is there in either Committee report a suggestion that the prior service for which longevity placement is to be allowed under Section 6 is exclusively prior service outside of the District of Columbia. Such a suggestion, and none other, would support the distinction between service in the District schools and service outside which appears to be the basis of the Newman opinion.

It has been suggested that the phrase "in other school systems" which occurs at the end of the paragraph in the Committee report relating to Section 6 of the bill, indicates that the Committee had in mind exclusively years of experience elsewhere than in the District of Columbia. The context, however, shows that the portion of the paragraph in which this phrase occurs is the portion dealing with teachers "newly appointed," not with teachers already in the service.

For the convenience of the Court this paragraph which was included first in the House Committee report (Record 4803, p. 25), and afterwards in the Senate Committee report (Record 4803, p. 17), is here reproduced (*italics* are ours):

"Section 6 provides for the *longevity placing* of employees *now in the service*. Definite assignment is provided for teachers and officers in new classes or positions. Authority is *also* given to the board of education to assign *newly appointed employees* on the basis of experience in accredited schools and allows longevity also for military service. Credit will not be given to the elementary teachers for more than four years of experience, and in the case of high-school teachers not more than five years' experience in other school systems."

In our brief in the several cases heard with the Newman case at the last term of court, pages 20 to 21, we were at some pains to point out that the testimony of the Superintendent of Schools before the House Committee, which is relied upon by the District (Record 4803, pp. 71, 72), related exclusively and expressly to "this particular Section" 4, and not to Section 6 of the Act. We refrain from reproducing this analysis of his testimony, not only because it is already in our other brief, but because no importance appears to have been

attached to this testimony in the opinion in the Newman case.

The Proceedings in the House and Senate.

When the bill and the report came before the House of Representatives on March 31, 1924, such discussions were had on the floor of the House and such amendments proposed and adopted as indicated most plainly that the House of Representatives thoroughly understood that Section 6, paragraph q, applied to employees then in the service, and that the longevity there authorized was to be given in respect of service in the District of Columbia, as well as other accredited schools, though service in the District of Columbia had already been the basis of longevity increases at the meager rates provided in the Act of 1906. These proceedings on the floor of the House and the amendments made in the House and in the Senate were not, as is above noted, called to the attention of the Court when the Newman case and the other cases were heard at the last term, but they are stipulated to be now before the Court (Records, pp. 7-8).

Counsel must confess ignorance at that time of the great assistance to the teachers' contentions which is to be found in the Congressional Record of March 31, 1924, and May 22, 1924, and in the legislative history of the final paragraph appearing in Article II of the Act, which paragraph reads as follows:

“The school officers provided for in Article II of this Act during the first year of service shall receive compensation at the basic salary fixed herein and not receive credit for services prior to the passage of this Act.”

The Court will note that this provision applies exclusively to the school *officers* in Classes 5 to 12 of the Act. It does not apply to the *teachers* in Class 1 with whom we are here concerned. Even without the light thrown upon the matter by the Congressional Record, the familiar principle of the expression of one being the exclusion of the other would indicate that the teachers in Class 1 were intended to "receive credit for services prior to the passage of this Act." But the discussion on the floor of the House referring to service in these schools removes the matter from the realm of inference or presumption. The discussion is to be found in the Daily Congressional Record, Volume 65, 68th Congress, 1st Session, Nos. 88 *et seq.* at pages 5466 (reprint 5283) *et seq.*

Aside from the comparatively unimportant objection to the bill upon the ground of the apportionment of its cost between the United States and the District, the only opposition to the passage of the Act was based upon the precise provisions upon which we rely, that is, the proviso in Section 4 to the effect that teachers and other employees shall be entitled to longevity placement as provided in Section 6, and the provision in Section 6, paragraph (q), that employees in the service of the Board on July 1, 1924, shall receive longevity increases according to their previous number of years of experience (Congressional Record, pp. 5466, 5467, and particularly 5476, reprint 5283, 5284 and 5295).

This attack upon the bill, however, was not directed against the granting of this additional longevity pay to *teachers*. All members of the House who spoke excepting one (and he was rather easily satisfied and silenced, Congressional Record, p. 5486, reprint 5305), were apparently willing that as to *teachers* their services here and elsewhere prior to the passage of the Act

should be counted under Section 6, paragraph (q), to bring their pay to whatever figure it would, up to the maximum provided by the Act. As to *officers*, however, first the minority and then the majority Committee members (Congressional Record, pp. 5484, 5485, reprint 5301, 5304) proposed that the longevity increases provided in the Act should be prospective only in their operation and should not be granted for service prior to July 1, 1924.

The amendments put into the Act by the House of Representatives to carry out this intention were two.

One at the end of Article II of the Act was as follows (Congressional Record, p. 5485, reprint 5304):

“The school officers, provided for in Article II of this Act, shall receive compensation at the basic salary fixed herein, and shall not receive credit for services prior to the passage of this Act.”

The other was at the end of Section 6, paragraph (q), as an additional proviso, as follows (Congressional Record, p. 5488, reprint p. 5307):

“And provided further, that nothing in this or in any other section of this bill will authorize service rendered prior to July 1, 1924, to be credited to any employee other than teachers, and all accredited service shall be confined to service rendered in and to the schools of the District of Columbia.”

Before the latter amendment was offered, it had been explained on the floor of the House (Congressional Record, p. 5486, reprint p. 5305) that the former amendment was aimed only at officers, as follows:

“No, it applies only to the officers, it does not apply to the teachers at all. All the teachers get

their longevity allowance under this bill according to the years of service they have rendered, *either in this school or in any other school*, and they get it even if they have been in the service during the war.” (Italics ours.)

Other remarks on the floor of the House included the following:

“Practically all of the salaries will start not on the basic salary on July 1, but at the maximum salary, because most of these officers and teachers already have served the number of years provided for in the bill” p. 5466, reprint 5283.)

“If you even start to put such an amendment into this bill that prior service shall not count, you will have all the teachers and officers in the gallery turning somersaults. Leave it to the occupants of the gallery, and they will tell you it is their prior service that they want to count, and they understand that it does count in this bill. And, as a matter of fact, it does count.” (id.)

Mr. Black of Texas. “If the gentleman will permit the gentleman from Alabama (Mr. Oliver) is correct. For example, if a man was in grade 5 of the Postal Service, when the new salary range was made he was transferred to grade 5 in the new range.”

Mr. Madden. “That is true and that is just what I said. We increased the entrance pay.”

Mr. Black of Texas. “That amounted, of course, to giving him the benefit of his prior service.”

Mr. Madden. “We made the entrance pay larger.”

Mr. Oliver of Alabama. “And unquestionably, when we passed the increase bill for the allied military service last year, we gave the benefit of all increases to those who had performed previous service.” (p. 5477, reprint p. 5295.)

When the possibility of the Superintendent of Schools getting an initial longevity allowance under the new bill for his service prior to July 1, 1924, was under discussion, which possibility was eliminated by the House Amendment, the following discussion took place:

Mr. Jones. "I would like to suggest in that connection there is a proviso about the middle of page 10, which is—

Provided. That under the provisions of this section the present compensation of any teacher, school officer, or other employee shall be construed to include basic salaries, longevity allowance—

And so forth."

Mr. Lehlbach. "But he does not draw any longevity allowance at the present time. It says the present salary and then goes to the salary next above that."

Mr. Jones. "And the next proviso says that teachers and other employees shall be entitled to longevity placement. What does that mean?"

Mr. Blanton. "That is what I have been contending all the time."

Mr. Snell. "Is the gentleman sure about this beginning at \$8,000——"

Mr. Blanton. "We will fix that——"

Mr. Snell. "Then what is the use of talking about that?" (p. 5467, reprint p. 5284.)

"Now, there is no question about the teachers, and I would not have it otherwise. Each teacher is entitled to a basic salary of so much and \$100 each for 10 years. Suppose a teacher has taught for 10 years. She should be entitled to her longevity allowance. She ought to begin with the maximum salary; that is fair, and I would not have it any other way. I would contend for it if it were not already in the bill, but it is in the bill, and a

teacher who has taught 10 years will begin with the maximum salary provided in this bill. There is no question about it.

“Now the point I made was this: There is nothing in the bill which keeps the officers from beginning with the maximum salary provided in the bill when they have already served the required number of years, and you can not find one word in this bill which will prevent every officer in the school force from beginning with the maximum salary.” (p. 5476, reprint p. 5295.)

When the bill came before the Senate with these amendments on May 22, 1924, the latter one of them (*supra*, p. 18) was stricken from the bill and the former one of them (*supra*, p. 18) was clarified by the insertion of the words “during the first year of service,” making the bill read as it now appears in the Act. (Congressional Record, p. 9366.)

The reasons why the Senate struck out from the bills the latter one of the two House amendments do not appear to be stated either in the Committee reports or in the proceedings of the Senate. The Senate Committee Report merely recommended that this House amendment be eliminated (Record 4803, p. 11), but stated no reasons. The Senate Committee Report, after the opening paragraphs, was a mere reprint of the House Committee Report. It seems apparent, however, that the reasons were: first, that the principal purpose of the House amendment, the prevention of the credit the bill might otherwise have given to *officers* for the years they had already served in their positions prior to July 1, 1924, had been accomplished by the first of the two amendments which was adopted and clarified by the Senate; secondly, the second of the amendments would have prevented such credit to persons such as school librarians who were included

in classes 1 to 4 of the new Act and were not *officers* at whom the amendments were aimed; and thirdly, to have adopted the amendment with the restriction of credit to service in the Washington schools, as to teachers, would have been not only to restrict placement credit under the new Act but also to restrict entrance credit for prior service, eliminating entirely service outside the local schools, contrary to the legislative policy with regard to the high school teachers since 1908, which would hardly have been done without considerable discussion and over some opposition.

It is very apparent, however, that since the first of these amendments was concurred with in both Houses and the second of them was put into the bill by the House of Representatives, and merely eliminated by the Senate, without any substitution for it, that both Houses of Congress believed "that service rendered in and to the schools of the District of Columbia" prior "to July 1, 1924," by teachers, not officers, was made by the Act to be the basis of longevity credit in salaries for the year beginning July 1, 1924.

It would unduly prolong this brief to quote in full the discussion on the floor of the House, which is more convincing than any summary of it. It will be found, however, almost in full in the Appendix to the brief in support of the motion for rehearing in *District of Columbia vs. Newman*, No. 4803, also Nos. 4804-7.

Nowhere in this discussion was there any suggestion that the fact that teachers in the local schools had currently received longevity credit at the smaller rates of the 1906 Act was any reason for denying them credit for their years of service in the local schools prior to July 1, 1924, at the new rates of the 1924 Act. The House amendment which restricted such credit exclusively to local service (above referred to as the second

House amendment) which was eliminated by the Senate, was approved only by the House, but the action by both Houses on it is conclusive that attention was directed to the fact that local service prior to July 1, 1924, was included in the service for which credit was given. The discussion in the House all assumed and some of it expressly stated (*supra*, pp. 19-21) that longevity credit under the new Act was to be given for consecutive service in the local schools immediately preceding July 1, 1924, for which services credit had necessarily already been given in the fixing of prior salaries under the old Act. Longevity credit under Section 6 for service in the District of Columbia schools must have been included, else an amendment narrowing the credit to such service exclusively would not have been considered and adopted by the House, nor an amendment excluding officers from such credit would not have been adopted by both Houses.

Statute Applied to Pending Cases.

There is no dispute or question as to the application to the pending cases of the opening paragraph of the Act of June 4, 1924, which directs that on and after July 1, 1924, the salaries of teachers shall be as stated in the several articles of the Act. Nor as to the class and group in which these teachers are, Class 1, Group A, as to which Article 1 of the Act directs:

“A basic salary of \$1,400 per year, with an annual increase of salary of \$100 for eight years, or until a maximum salary of \$2,200 per year is reached.”

The plaintiffs contend also that Article IV, Section 4, is applicable to them. It reads:

“Sec. 4. That for the fiscal year ending June 30, 1925, every teacher, school officer, or other em-

ployee in the service of the Board of Education on permanent tenure on June 30, 1924, shall receive the salary provided in the foregoing schedule for his class or position in accordance with the following rules”:

“(c) All other teachers and school librarians assigned to Group A of the salary classes in the foregoing schedule shall receive the salary in the classes to which assigned which is next above their present compensations and in addition shall receive one annual increase of salary of \$100 as provided in the foregoing schedule.

“(d) . . . *Provided*, That under the provisions of this section the present compensation of any teacher, school officer, or other employee shall be construed to include basic salary, longevity allowance, session-room allowance, and increase of compensation (bonus): *Provided further*, That teachers and other employees assigned to classes 1, 2, 3 and 4 in the foregoing schedule shall be entitled to longevity placement as provided in section 6.”

The “present” compensation of plaintiff Evva M. Herron was \$1,515, and that of Laskey W. Johnson was \$1,530 (Records, pp. 6). The salary in the new schedule next above “their present compensations” was therefore \$1,600.

One annual increase of \$100 made their salaries \$1,700. We note here without extended discussion that we construe this increase of \$100 to be the increase in respect of service during the year ending June 30, 1924; and, therefore, in the longevity calculation later to be made, we do not claim an additional \$100 in respect of the service for that year. We find that this Court in its opinion in the Newman case has an identical view of this \$100 increase, though there

appears to be a clerical error in the opinion which reads (p. 3):

“The item of \$100 represents the earned increase resulting from service during the first year under the new law, that is, for the year ending June 30, 1925.”

Obviously, the Court intended to say “resulting from service during the year immediately preceding the taking effect of the new law, that is, the year ending June 30, 1924.” The \$100 increase of salary was to be paid during the year ending June 30, 1925, which was the first year under the new law; it had been earned by service the preceding year.

At the end of the next paragraph on the following page, the Court refers to this increase as an “earned increase.” There is no difference between our view and that expressed in the opinion as to this increase being “earned” by service during the preceding year. We consider, however, that any other increase provided by the law by reason of prior service is equally earned.

We consider the legislative intent in adding this \$100 to have been identical with the legislative intent expressed in the Act of August 31, 1918 (40 Stats. 932), and in the Act of July 11, 1919 (41 Stats. 81).

The same subject-matter is dealt with in our brief in Nos. 4803-4807, pp. 29 to 30.

There remains to be given effect the final proviso of the portion of Section 4 above quoted:

“Provided further, that teachers and other employees assigned to classes 1, 2, 3 and 4 in the foregoing schedule shall be entitled to longevity placement as provided in Section 6.”

Section 6 provides :

“Sec. 6. That teachers, school officers, and other employees in the service of the Board of Education on July 1, 1924, shall be placed in the salary classes and positions of the foregoing schedule as follows:”

“(q) . . . Provided further, that . . . all teachers and other employees assigned to classes 1, 2, 3 and 4 of the foregoing schedule in the service of the said board on July 1, 1924, or thereafter appointed shall receive their longevity increase according to their previous number of years of experience in teaching in like positions in accredited schools to those which they hold on July 1, 1924, or to which they may thereafter be appointed . . .”

“Provided further, that no teacher or other employee shall be placed in the salary schedule for more than the fourth year of experience in classes 1, 2, Group A, . . .”

The plaintiffs were in the service of the Board of Education on July 1, 1924. They were in Class 1. Their previous years of experience in like positions in accredited schools to those which they held on July 1, 1924, were:

Included in their consecutive service, the school year 1920-1921, which is one year; the school year 1921-1922, which is two years; the school year 1922-1923, which is three years; and the school year 1923-1924, which is four years (Records, pp. 6).

Included in their non-consecutive service, were, in the case of the plaintiff Evva M. Herron, fifteen years in the public schools of Allegheny County, Pennsylvania, and, in the case of Laskey W. Johnson, eight years in the public schools of the District of Columbia (Records, pp. 6).

The plaintiff Evva M. Herron therefore had nineteen previous years of experience in teaching in like positions in accredited schools, and the plaintiff Laskey W. Johnson had twelve years of experience in teaching in like positions in accredited schools.

They could receive credit, however, under Section 6 for only four years of experience, in respect of one of which, the year ending June 30, 1924, they had already been given credit (*supra*, p. 24). Therefore, in respect of three additional years, they were entitled to credit at \$100 per year, and their salaries were by virtue of Section 6 and by virtue of the proviso at the end of Section 4 increased from \$1,700 to \$2,000 per year, and \$2,000 should have been their final rating for the year ending June 30, 1925.

Their final rating for that year by the District was \$1,800.

The subsequent years were, of course, governed by the initial rating. Plaintiffs were paid \$1,800 for the first year, \$1,900 for the second, and \$2,000 for the third. They should have been paid \$2,000, \$2,100 and \$2,200. Their claim is therefore \$600 each, plus interest. It is of interest that after the third year their claims will diminish,—the fourth year their claim will be \$100 each, and the fifth year nothing, because the salary actually paid increases annually, whereas the claim does not increase after reaching the maximum of \$2,200.

Teachers of Experience Outside the District Were Not Exclusively Dealt with in Section 6, Paragraph (q).

In the opinion in the Newman case (p. 4), attention is called to the fact that prior to the Act of May 26,

1908 (35 Stats. 289), teachers brought into the service from other jurisdictions received no "longevity" placement, that is, no credit for their experience in other jurisdictions; and that that Act applied only to normal and high school teachers. The opinion states that it was the intent of Congress in Section 6, paragraph (q), of the present Act to extend to graded school teachers who had experience in other jurisdictions prior to their appointment in this jurisdiction the same benefit of longevity placement as was by the Act of May 26, 1908, extended to normal and high school teachers.

We agree entirely that this was an intent and is an effect of Section 6, paragraph (q), of the present Act. But there is no basis for a conclusion that this was the sole intent or is the sole effect.

The construction given to the Act by the Court's opinion is more narrow than the Act itself.

The opinion in the Newman case states that the intent was "to correct the apparent unjust discrimination against teachers other than those in normal, high or manual training schools." We agree with this also; but if the Act is narrowed by construction to the extent indicated in the opinion in the Newman case, an unjust discrimination against teachers whose entire experience has been in the District of Columbia schools will result where none was intended by the Act nor compelled by its phraseology.

At the risk of stating the obvious, we point out that teachers whose entire experience was in the District of Columbia schools were receiving under the old Act most of them \$25 and \$30, and some of them \$40, annual increases. Under the new Act, the credits for service are at the rate of \$100 per year. To give initial rating to teachers whose experience has been

outside the District of Columbia at the rate of \$100 per year, and to deny it to District of Columbia teachers upon the ground that they have already received credit at \$25 per year, is to create a discrimination more illogical and less likely to have been intended than the old discrimination between high school and graded school teachers with reference to experience prior to appointment. And the discrimination which actually results is even greater, as hereinafter appears, because often the small increases under the old Act have no effect on the new salary.

The opinion in the Newman case reads into the Act a provision which might well be phrased as follows:

“All accredited service shall be confined to service rendered otherwise than in and to the schools of the District of Columbia.”

The Phrase “In Accredited Schools,” Etc.

The opinion in the Newman case (page 6) points out the phrase in Section 6, paragraph (q), to the effect that these teachers “shall receive their longevity increase according to their previous number of years of experience *in teaching in like positions in accredited schools to those which they hold on July 1, 1924,*” and italicizes the words which are above in italics, and asserts that the italicized words would have been unnecessary if it had been the intent of Congress “to add to the longevity increase *already provided* for local teachers who had not been brought into the service from other jurisdictions.”

This comment in the Newman case is peculiarly important because it is the only comment adverse to our view based upon the provisions of the statute itself. We respectfully submit that this comment should be reconsidered.

It would be accurate to say that if it had been the intent of Congress to confine the prior teaching for which longevity credit was to be given to teaching in the local schools, then an appropriate phrase would have been "in like positions in the public schools of the District of Columbia to those which they hold on July 1, 1924." If on the other hand the intent of Congress had been to confine the prior teaching for which longevity credit was to be given to teaching in other jurisdictions, the appropriate phrase would have been: "in like positions in accredited schools outside the District of Columbia to those which they hold on July 1, 1924." But if it was the intent of Congress, and we submit it was, to include both the local schools and outside schools of equal standing, no other phrase was so appropriate and terse as "in like positions in accredited schools to those which they hold on July 1, 1924."

The fact that a different phrase would have served to include experience in the local schools alone is certainly no argument that the broader phrase does not include local as well as other schools.

The phrase "in like positions" was necessary to preclude credit for dissimilar service being claimed, such as service in the graded schools as a basis for longevity pay in the high schools.

The word "accredited" was necessary to eliminate schools of lesser academic standing.

The phrase "to those which they hold on July 1, 1924," was necessary because the fiscal year beginning July 1, 1924, was being dealt with in this Section 6, whereas it was the status of teachers during the fiscal year ending June 30, 1924, which was the point of view of Section 4.

We most respectfully differ from the view that this

sentence would have been complete or accurate had it stopped after the word "experience," which might have meant experience as administrative assistant, not as teacher—it might have meant experience in a teaching position of another type or kind—it might have meant teaching in an inferior school; whereas the intention of the legislature accurately expressed was to indicate teaching experience in a position similar to the position held at the beginning of the fiscal year under the new Act.

Phraseology Compared with Prior Statutes.

The Newman opinion states that its view is based also upon the similarity of this language in the present Act to the language used with regard to high school teachers in the Act of May 26, 1908, which is referred to as the law at the time of the passage of this Act of 1924. (Opinion pp. 4, 6.)

As a matter of fact, though the Act of May 26, 1908 (35 Stats. 289), was the first Act giving credit for prior non-consecutive teaching, it was not the Act in force at the times here material. There had been passed also the Act of May 18, 1910 (36 Stats. 393), and the Act of June 26, 1912 (37 Stats. 156).

These three statutes all use the word "accredited" in the phrase "experience in teaching in accredited normal, high or manual training schools." We do not hesitate to agree that the use of the word "accredited" indicates an intent to include schools other than the District of Columbia schools. Our difference of view is based upon the fact that we do not think the use of the word excludes or was intended to exclude District of Columbia schools. Despite the use of the word in the three former Acts we know of no judicial decision

dealing with it. We assert, however, and we are confident there will be no dispute, that in the administrative construction of the three Acts cited prior disconnected service in the District of Columbia normal, high and manual training schools, which could be credited only pursuant to these statutes, has been credited to all teachers appointed who have possessed as a basis for a claim of such credit experience in the Washington normal, high or manual training schools.

It necessarily follows that the word is to be given an equally broad significance in the present Act.

The Past Credit Under Old Statute No Bar to Present Credit Under New Act.

Despite the comment in the Newman opinion upon the phraseology we have just been discussing, we do not believe that the substantial basis of the Newman opinion was that the phrase "accredited schools" did not include District of Columbia schools. We believe that what inclined the court to state such a view was really a feeling that longevity credit had already been given for such service as was in the schools of the District of Columbia, and that a construction of the Act must be sought which would prevent such service from in any way counting twice.

Our answers to this have perhaps already appeared in connection with the legislative history of the Act.

It is very apparent that Congress knew and had in mind that service in the District of Columbia schools had already resulted in longevity credit. Yet Congress deliberately and explicitly directed the inclusion of such longevity credit in Section 4 in the phrase immediately preceding the phrase which directed further that there should be longevity placement under Section 6.

And as a matter of fact much service in the local schools resulted in no longevity credit which had any effect upon placement under Section 4. Thus all prior service in classes 1 and 2 in excess of four years had received no longevity credit because the Act of 1906 provided no longevity step-ups for these classes beyond four. Nor was there any longevity credit in the graded schools for such disconnected prior service as had been rendered by the plaintiff Laskey W. Johnson, or the appellee Edith W. Ely in Case No. 4805, nor the appellee Edna Ellis Hilton in Case No. 4807. And such prior District of Columbia service as resulted in small \$25 to \$40 step-ups not crossing another even \$100 had no effect in placement under Section 4 of the Act. And such prior service as did have an effect (by operation of Section 4) was at the small rates of the Act of 1906.

If, however, it be conceded, as it seems to us it must be conceded, that prior service in the District of Columbia schools is service in "accredited" schools, there is no warrant in the Act for differentiating between such service as had been given credit under the old Act and such service as had not been. If Congress had wished such a result it would have provided in place of the final proviso above quoted in Section 4 of the Act "that teachers and other employees assigned to classes 1, 2, 3 and 4 in the foregoing schedules shall be entitled to longevity placement as provided in Section 6, *in respect of all years of service for which no longevity allowance is included in their "present" compensation, as defined in this section.*" Congress, however, made no such restriction with regard to the previous service for which legislative credit was to be given, and it is respectfully submitted that it is not within the realm of judicial construction of the Act to read into it any such restriction.

Further Comparison with Former Longevity Credit Acts.

The Act of May 18, 1910, was more similar in phraseology to the Act here under discussion than was the Act of May 26, 1908. It provided:

“That teachers now employed in Group A, Class 6, . . . or hereafter to be appointed . . . may be placed in said Group A, Class 6, and receive their longevity increase according to their previous number of years of experience in teaching in accredited normal, high or manual training schools.”

This was in the appropriation Act for the year ending June 30, 1911. A comparison of its effect upon the salary of a teacher then in the high schools with the effect of the present statute may be useful.

In this prior statute, “previous,” in the phrase “previous years of experience” means previous to appointment. Previous in the present statute, however, must mean previous to July 1, 1924, with regard to teachers in the service, not only because that day is the start of the new system, but because the language used compels that meaning.

Let us assume that a teacher had been appointed in the high schools at the beginning of the year ending June 30, 1907. The basic salary in Group A, Class 6, was then \$1,000, and the longevity had always been \$100. She would have received for the year ending June 30, 1907, \$1,000; for the year ending June 30, 1908, \$1,100; for the year ending June 30, 1909, \$1,200*; for the year ending June 30, 1910, \$1,300; for the year ending June 30, 1911, \$1,400.

* The Act of May 26, 1908, would not have helped her because it applied only to teachers thereafter appointed.

If, however, she had prior to her appointment two years of service teaching in the high schools either of the District of Columbia or in any other accredited high school, she would have been entitled to claim at the effective date of the Act of May 8, 1910, which would be during the year ending June 30, 1911, \$200 additional salary in respect of these two additional years of experience. This \$200 would be added to the \$1,400.

We do not think that anyone would contend that the credit for her experience in teaching during the year ending June 30, 1907, or 1908, or 1909, should not be counted as a part of the credit which would bring her salary up to \$1,400, upon the ground that she had received credit for these years, in fixing her salary for the year ending June 30, 1910.

Nor do we believe that anyone would contend that it would make a difference whether her two previous years of experience had been in the District of Columbia schools or elsewhere.

There is a substantial difference between the problem presented in rating the teacher whose case we have just imagined under the Act of May 18, 1910, and the problem presented in rating graded school teachers under the Act of June 4, 1924. By the latter Act the rate of longevity is changed, and the basic rate is changed, and it is necessary to fix a fresh starting point under the Act of June 4, 1924. The former Acts were merely to add additional longevity credit to that already given.

Inasmuch as the basic and the longevity rate were changed, the problem was presented of what to do with the longevity which had been earned at the lower rates under the old Act. It was manifestly unfair not to give credit to teachers already in the service for prior service at the higher rates of the new Act, if

such credit was to be given anyone for past service. To do so would have been to postpone as to these teachers the taking effect of the new act in the only respect in which it represented a substantial increase of salaries.

Congress decided, having lowered the basic rate by \$40, to add to the new basic as an entering salary the sum total of such comparatively small longevity as had theretofore been earned under the old statute, and then to give longevity at the new rate to all teachers in the graded schools for all service prior to July 1, 1924, with a limitation that no more than four prior years should be credited at the new rate.

This is what the Statute plainly directs. There was a problem of placement to be dealt with, more complicated and much more broad than the problem dealt with in the case of high school teachers in the Acts of May 26, 1908, May 18, 1910, and June 26, 1912, *supra*, and to assume arbitrarily that because the more simple problem of placement for outside or non-consecutive service is governed by paragraph (q) of Section 6, that this is its sole intent and purpose, is arbitrarily to restrict the meaning of the paragraph and to do violence to the context, all of which deals with the broader problem.

Congress Did Not Intend to Discriminate Against Local Teachers.

Incidentally, as is above noted, even if the language were susceptible of such a construction as is placed on it in the Newman opinion, such a construction should be avoided as unreasonable because discriminating in favor of teachers from outside the District of Columbia and against teachers whose experience has been in our own system.

One could assume that Congress meant to make such an unjust discrimination only if compelled to that conclusion by the most explicit language.

Furthermore, as is above noted, the District of Columbia itself has not adopted the construction suggested in the Newman case. These plaintiffs in error received longevity increases because of previous experience. Section 4 would have rated them at only \$1,700. Their rating at \$1,800 under Section 6 can be explained only by stripping them of the advanced rating granted by Section 4 and putting them back to the basic of \$1,400 and adding to the \$1,400 the \$400 credit compelled by Section 6. And there is certainly no warrant in the Statute for depriving any teacher in the service on permanent tenure on June 30, 1924, of the benefit of Section 4.

It must be admitted that the Statute if given full effect according to our contention preserves to some of the teachers whose service has been entirely in the schools of the District of Columbia benefits, comparatively small though they were, which they had enjoyed under the old Statute, that is to say, teachers whose service has been outside of the District of Columbia get only the longevity credit directed by Section 6, paragraph (q), up to the limit of four times \$100. Teachers whose service has been in the District of Columbia keep under the new Act in some cases credit which resulted from past service in so far as the longevity pay they had been receiving under the old Act brings their "present" compensation as defined in Section 4 above \$1,500 (for all received \$1,440) or above even hundreds thereafter. In some cases such as the Padgett case, No. 4806, the longevity element in the old salary, not amounting to an additional even \$100, has no effect whatsoever upon the rating under Section 4

and therefore no effect whatsoever upon the salary under the new Act, and the teacher preserves under the new Act no benefit whatsoever from her prior service excepting under Section 6, paragraph (q), of which benefit the doctrines of the opinion in the Newman case would deprive her because it was service in the District of Columbia.

But in many cases, the fact that the prior service has been in the District of Columbia does result in an increase in the initial rating under Section 4, so that this fact (of service within rather than outside the District) results in a higher rating under the new Act for an equivalent amount of service, as had been the case for many years theretofore.

If, however, the Act were open to either one of two constructions (which it is not), and the one construction would preserve to teachers who are the old employees of the District of Columbia such small advantages as they had, and the other construction would not only strip them of any advantage but would actually favor teachers whose prior experience has been elsewhere, we would have no doubt that Congress intended the former and not the latter construction. The Newman opinion, without any basis, as we see it, in the language of the Act, adopts a construction unreasonably favoring teachers whose experience has been outside the District of Columbia.

The additional credit which in some cases results to District of Columbia teachers is not double credit. It took in all cases three and usually four years of service under the old Act to equal \$100.

The new Act permits only four years credit at the new rates for prior service, so that if there have been more than four years of service, the additional credit results if at all only at the rates of the old Act and under Section 4.

Legislation to Equalize Position of Teachers of Outside Experience Would Have Differed from Present Act.

The gist of the Newman opinion, as we understand it, is that the purpose of Section 6 was to correct a discrimination against graded school teachers who had been brought into the system from outside schools. To accomplish this correction, the Newman opinion assumes that Congress went to the other and improbable extreme and discriminated against District of Columbia teachers. If Congress had intended that District of Columbia teachers should not have the benefit of the longevity provisions of Section 6 and had desired to place graded school teachers who had been brought into the system upon a basis of equality as to longevity with District of Columbia teachers who were (under this hypothesis) to receive only the benefit of Section 4 and not Section 6, Congress could very simply and easily have provided in Section 4 that in computing the present compensation of any graded school teacher who at the time of her appointment to the District of Columbia schools had prior service in accredited schools in like position, there should be included an amount of additional longevity credit equal to the amount which she would have received under the old Statute if such service had been in the District of Columbia schools. In this way outside teachers would have gotten the same small credit under the old Act that teachers in the District of Columbia had gotten, and outside teachers would have been placed upon a basis of equality. Section 6 could then have been amended so as to make, prospectively, the same provision for future appointees.

What the Newman opinion attributes to Congress, however, is quite a different intent: that of giving

credit for outside service at the new and higher rates of the new Statute, and limiting credit for service in the District of Columbia to the lower rates of the old Statute. This is not to cure a discrimination but to create one.

The Statute's Supposed Ambiguity.

The fact that a salary Statute requires the close and attentive reading of a trained mind familiar with the Statute it amends and with prior amendments, is no reason to brand it as ambiguous. Many precise documents, and salary statutes are necessarily such, are not easy reading and are baffling to one who does not give them close attention, but are not for that reason ambiguous.

Out of all the discussion of the present Statute, only two considerations have emerged in support of the theory that the Statute is ambiguous:

One is an unwillingness on the part of some to accept the plain mandate of Congress in so far as the Act liberally gives some teachers already in the system credit in two ways for back service. We have attempted to make plain that this credit is comparatively small, is limited to long service teachers, upon whom also falls the burden of the provision that no more than four years' credit shall be given for longevity, and as so limited is well deserved by the teachers, and is in fact the real benefit to them of the Statute. It is not unreasonable for Congress to have desired the credit to be given as directed in the Statute, and even if our judgment differed with that of Congress, that fact would not create an ambiguity with regard to the meaning of the Statute.

In the words of the Supreme Court:

“Decisions of this court, where the letter of the Statute was not deemed controlling and the legislative intent was determined by a consideration of circumstances apart from the plain language used, are of rare occurrence and exceptional character, and deal with provisions which, literally applied, offend the moral sense, involve injustice, oppression or absurdity (*U. S. vs. Goldenberg*, 168 U. S., 95, 103; 42 L. ed., 394, 398; 18 Sup. Ct. Rep., 3), or lead to an unreasonable result, plainly at variance with the policy of the Statute as a whole (*Ozawa vs. U. S.*, 260 U. S., 178, 194; 67 L. ed. 199, 207; 43 Sup. Ct. Rep., 65). Nothing of this kind is to be found in the present case.” *Van Camp & Sons Co. vs. American Can Co.*, Advance Sheets, decided January 2, 1929; 73 L. ed., 145, 147.

The second and only other consideration advanced in support of the theory that the Statute is ambiguous is that the Committee reports contain illustrations of the effect of Section 4 in rating teachers under the new Act, and no illustrations of the effect of Section 6, paragraph (q). Perhaps this is because to attempt to illustrate by any schedule the effect of Section 6, paragraph (q), would be to make a tabulation including almost as many examples as there are teachers in the system. Section 6, paragraph (q), taken in connection with Section 4 is not susceptible of precise tabulation as is Section 4 alone.

Be that as it may, however (and disregarding the discussions and amendments on the floor of the House and Senate which certainly sustain our theory of the effect of the Act), it is our view of the law that Committee reports cannot be resorted to to create ambiguity, but only to solve one if one appears on the face of the Act itself. The case which is cited on this point in the Newman opinion, *United States vs. Mo. P. R.*

Co., decided January 2, 1929, by the Supreme Court, Advance Sheets, 73 L. ed., 136, 139, states very plainly the doctrine upon which we rely, as follows:

“The language of that provision is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are therefore bound by the words employed, and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that where no ambiguity exists there is no room for construction. Inconvenience or hardships, if any, that result from following the Statute as written, must be relieved by legislation. It is for Congress to determine whether the Commission should have more authority in respect of the establishment of through route. Construction may not be substituted for legislation. (Citing cases.)

“Appellants seek to support the view for which they contend by some of the legislative history of the enactment and especially by explanatory statements made by Senator Elkins in connection with the report of the majority of the Senate committee submitting the bill for the Act in question. Where doubts exist and construction is permissible, reports of the committees of Congress and statements by those in charge of the measure and other like extraneous matter may be taken into consideration to aid in the ascertainment of the true legislative intent. But where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed. (Citing cases.)

“But the reasons for and the significant circumstances leading up to the enactment may be noticed in confirmation of the meaning conveyed by the words used. (Citing cases.)

“Appellants’ construction is not supported by the legislative history, reference to which is printed in the margin,¹ but, all essential parts considered, it strengthens the conclusion that the words used express the purpose intended to be given effect.”

See also *Work vs. U. S. ex rel. Rives*, 54 App. D. C. 84, 86, and *Wisc. Railroad Commission vs. Chicago B. & Q. R. R.*, 257 U. S. 563, 589, 66 L. ed. 371, 383, quoted from in our brief in the Newman case, pp. 23 to 24.

School Salaries Are Fixed by Law.

The Court will recall that it was the contention of the District of Columbia in its briefs and on oral argument in cases Nos. 4803 to 4807 that the Board of Education may in its discretion invoke Section 6 in some cases, and then only to the extent that it considers equitable, and disregard Section 6 in other cases which make no appeal to its discretion. The Court may recall that in the Ely case, No. 4805, and the Hilton case, No. 4807, the salary paid by the District was in excess of the amount directed by Section 4 taken alone and could be accounted for only by the assumption that in those cases the District was invoking Section 6, Paragraph (q), to a limited extent. In the present cases, as in many others in the court below, the same situation exists. The salary paid is in excess of that which would be arrived at under Section 4, and in the stipulation it is stated as a fact that the amount paid was arrived at by applying the provisions of Section 6, paragraph (q) (Records, pp. 7).

It may be, however, that the District of Columbia will again attempt to justify its course by contending that there is a discretion in the Board of Education to invoke Section 6 in cases it considers meritorious. We therefore remind the Court of the cases it has decided which have settled the law against such a contention.

District of Columbia *vs.* Genevieve Marsh, 47 App. D. C., 59, decided November 12, 1917, was a case of a teacher who was appointed nominally as a graded school teacher and so designated by the Board of Education, at a graded school salary, and immediately assigned to work in the high school. Despite her designation as a graded school teacher, she was held by the Supreme Court of the District and by this Court to be entitled to recover a high school salary. This Court said:

“The statute prescribes her status and her general classification has been established, and any attempt on the part of the Board to change the basis of compensation would be contrary to the express provisions of the statute, and therefore void.”

This same case establishes also the contrary of a proposition which has been somewhat faintly argued on behalf of the District in the present cases. It holds that the Board of Education has power by employing teachers who actually render service in the public schools to incur obligations to pay those teachers at the statutory rate binding upon the District in excess of the amounts appropriated by Congress, distinguishing *Myers vs. District of Columbia*, 25 App. D. C., 132.

The mandatory effect of statutes specifying what shall be paid to teachers in the public schools by way of compensation, and in the particular case (as in the

cases at bar) by way of "longevity" compensation, is well illustrated by *District of Columbia vs. Martin*, decided by this court January 4, 1910, 34 App. D. C., 265. In that case the statute under consideration was the Act of Congress of May 26, 1908 (35 Stats., 289), providing:

"That teachers hereafter employed in normal, high, and manual training schools may be placed in Group A, Class 6, and receive their longevity increase according to their number of years of experience in teaching in accredited normal, high or manual training schools."

It will be noted that the word "may," which is ordinarily permissive, rather than the mandatory "shall," is used in this statute, yet the teacher Martin maintained her suit and prevailed in the lower court and in this court to compel the allowance to her of a "longevity" increment to her salary. The mandatory effect of the statute was not even questioned in this court. The contention made by the District of Columbia in that case was that the statute had only a prospective effect and the question at issue was whether the teacher was "hereafter" employed.

We have pointed out above that what is called and appropriated for as "longevity" is merely the adjustable portion of a teacher's pay representing the difference between the rate fixed for her arrived at by considering all of the applicable statutes, on the one hand, and the basic rate for her class, on the other hand.

This is well illustrated by promotions from class to class where the entering salary in the new class is under the statutes higher than the basic rate of that class. Such a case was *District of Columbia vs. Gardner*, 54 App. D. C., 390, decided May 5, 1924. This was the case of a teacher promoted under the old Act from

Class 4 to Class 6, who had been receiving \$1,010 per annum in Class 4 and was given only \$1,000 per annum in Class 6. She sued for \$1,100 per annum, which would be expressed at \$1,000 basic and \$100 longevity.

She recovered judgment not because she had any prior service entitling her to longevity in Class 6, but because a construction of the Act of 1906, adjudicated in that case, fixed her salary at \$1,100, and the difference between the basic salary of Class 6 and her statutory salary was, of course, payable out of the appropriations for longevity.

The year following, Miss Gardner would, of course, receive \$1,200, arrived at by adding \$100 longevity to the \$1,100 entering salary, inasmuch as the increases in the high school given under the Act of 1906 were at the rate of \$100 per year.

So, in the pending cases, the rate is fixed by law by taking into account all the elements specified in the statute.

Contrary Contentions Summarized.

The plaintiffs' claim to what the statute provides for them has been opposed on the following grounds:

1. The theory upon which the accounting officials have acted in fixing salaries was and is that they could apply Section 4 in cases they considered appropriate, or they could apply Section 6, paragraph (q). They have applied Section 6, paragraph (q), without regard to whether the prior service was in the District of Columbia or elsewhere, and without regard to whether longevity credit under the old Act was given for such service. They have avoided what they considered objectionable duplication of longevity credit by arbitrarily disregarding Section 4 in all cases in which they invoked

Section 6. This accounts for what appears to be a partial or incomplete application of Section 6 in the many cases wherein Section 4 and Section 6 taken together would indicate a salary in excess of \$1,800, and the District authorities have cut the salary back to \$1,800 because that figure is the new basic of \$1,400 plus the maximum of four increases allowed under Section 6.

2. When hailed into court, the District did not maintain the foregoing as a correct theory. Presumably the Corporation Counsel could find no satisfactory basis in the statute for treating the two sections as alternative. The position taken in court by the District was, therefore, that Section 4 is the controlling section applicable to everyone, and that the provisions of Section 6 may be invoked to an extent not exactly defined in cases where the equities so demand. This is the theory we argued against when cases Nos. 4803 to 4807 were heard by the Court.

3. When the last-mentioned cases were decided by the Court (not finally), the theory was advanced that Section 6, paragraph (q), did not apply to service rendered in the public schools of the District of Columbia. This contention is the one which this brief and the brief and appendix in support of the motion for a rehearing are intended principally to discuss and combat.

In fairness to the Court and to the plaintiffs in error, the District of Columbia should in its brief make plain which, if any, of these contentions it now supports.

While recording here our great appreciation of the courtesy and patience of this Court in permitting this argument which is in effect also on the motion for a rehearing of the cases heard last term, yet if there is to be presented on behalf of the District of Columbia any opposition to the mandate of the statute on some

other theory not yet thought of, we respectfully request opportunity to be further heard upon it before the cases are finally disposed of.

The Newman Opinion Applied to the Several Cases.

If, despite our respectful difference with it, the Newman opinion is adhered to, then a reversal should, we submit, be ordered in No. 5014, the case of Evva M. Herron, upon the ground that she was a teacher brought into the service of the District of Columbia graded schools from outside for whose service prior to her teaching in the public schools of the District no longevity credit had been given. Inasmuch as she had fifteen years of such experience, she is entitled to the additional years credit she claims in her declaration.

Consistent with the doctrines of that opinion, a reversal should perhaps be ordered in No. 5013, the case of Laskey W. Johnson, because she had eight years of experience in the public schools of the District of Columbia prior to and disconnected in time with her appointment on October 4, 1920 (Record 5013, p. 6), from which her longevity dates. She therefore had in her salary no longevity increment or allowance for this prior service. In the words of the opinion, Congress had not "already provided for local teachers" of her class, and she could get credit for these eight prior years only pursuant to Section 6. Of course, since this experience was in the District of Columbia, she is not within the letter of the Newman decision.

Similarly, the decisions in Nos. 4805 and 4807, the cases of Edith W. Ely and Edna Ellis Hilton, might well be affirmed as within the principle but not the letter of the Newman decision, because there was in the salary of Edith W. Ely on June 30, 1924, no longevity

increase in respect of her service for the year ending June 30, 1923, nor in respect of the service for the year ending June 30, 1922, because she had reached the maximum of Class 2, nor any element of longevity by reason of her prior disconnected service for the eight years 1892 to 1900 (Record 4805, pp. 6 to 7); and there was in the salary on June 30, 1924, of Edna Ellis Hilton no element of longevity increase for her prior disconnected service for the years 1912 to 1920 (Record 4807, p. 5). Congress had not therefore "already provided for local teachers" of their classes. And longevity allowance for these additional years was given only by Section 6.

Similarly, No. 4806, the case of Madeline Padgett, might be affirmed as within the spirit though not the letter of the Newman decision because the element of longevity which was in her salary, \$25.00, on June 30, 1924, had no effect upon her placement under Section 4 of the Act because it did not lift her above another even hundred (Record 4806, p. 5). Congress had not, therefore, "already provided for local teachers" of her class with regard to longevity, and she would get no longevity credit excepting under Section 6 of the Act.

It might similarly be argued that No. 4804, the case of Flora G. Steinberg, should be affirmed because for the years 1916 to 1923, she having theretofore reached the maximum of longevity allowance permitted in her salary class, no additional longevity pay appears in her salary (Record 4804, p. 7). Therefore, Section 4 of the Act would have had the same operation if she had not had these seven years of experience, and she gets credit for them, if at all, under Section 6 of the Act only.

The only one of these cases within the letter of the Newman opinion is, of course, the first mentioned, that

of Evva M. Herron. The cases of Laskey W. Johnson, Edith W. Ely, Edna Ellis Hilton, and Madeline Padgett are, however, certainly within its spirit, if its spirit is, as we have understood, to find a construction of the Act to avoid what the Court, erroneously, we think, considers to be an unintended duplication of longevity credit in respect of the same years of service.

Conclusion.

It is respectfully submitted, however, that the Newman opinion should not be adhered to, that the plain language of the Statute itself, the legislative history which preceded it, the incidents attending its passage of the Houses of Congress, all indicate an intention to make a substantial present increase in the salaries of teachers who were in the service of the public schools of the District of Columbia by giving them an initial rating under the new Act pursuant both to Section 4 of the new Act and Section 6, paragraph (q), which taken together compel the rating of the plaintiffs in error at \$2,000 for the year ending June 30, 1925, and therefore, as would then be conceded, compel the affirmance of the judgments in Nos. 4803 to 4807, and reversal of the judgments of the Court below in these cases, Nos. 5013 and 5014, and the entry of judgments for the amounts sued for.

Respectfully submitted,

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PEELLE, OGILBY & LESH,
Of Counsel.

August 16, 1929.

SEP 21 1920

Henry M. Hodges
clerk,

IN THE

Court of Appeals, District of Columbia.

APRIL TERM, 1929.

No. 5013

LASKEY W. JOHNSON

vs.

DISTRICT OF COLUMBIA.

No. 5014

EVVA M. HERRON

vs.

DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF THE APPELLEES.

WILLIAM W. BRIDE,

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Statement of the Cases.

The statement of facts as made by the appellants is substantially correct, and there is no necessity for repetition.

ARGUMENT.

There is no new matter contained in the appellants' brief in these cases. All the points here discussed were brought out in the Newman case, either in the original briefs filed by counsel or in the brief filed by the appellees in that case on the motion for a rehearing. A great deal of extraneous and irrelevant matter is introduced which throws no light whatever upon the issues involved here.

The only difference between these cases and the series decided by the court in the Newman case is that these teachers were given a salary of \$1,800 when the Act of 1924 went into operation instead of \$1,700. If, as appellants' argument runs, section 4 of the Act was applicable, these teachers were entitled to \$1,700 only, whereas they were paid \$1,800 by the application of section 6. Therefore, the argument concludes, the Board of Education recognized the applicability of both sections and both must be applied in fixing the salaries of all teachers under the Act. This is plainly a *non sequitur*, as pointed out by the court in its opinion in the Newman case. It does not follow that because the applicability of these two sections in appropriate cases was recognized, that both of them must be applied with cumulative effect. It was stated to the court in the argument in the Newman case that the Board did apply, or attempt to apply, the provision of section 6 to a certain class of old teachers in order to equalize salaries under the Act and to prevent an obvious injustice. This point is discussed on pages 15

and 16 of appellants' brief in the Newman case. It became apparent when the Act went into effect and salaries were allotted that a number of old and experienced teachers were about to receive smaller salaries than others of the same or less experience, among them the present appellants. To remedy this situation the Board, rightly or wrongly, seized upon the provisions of section 6 to give these old teachers the higher salary. They did not, however, apply the provisions of both sections as cumulative. This question of inequality of salaries was not raised by some accountant, as counsel seems to think, but was raised by the teachers themselves. It is apparent that in the application of an Act of this character to a large body of teachers that some inequalities were sure to be developed. No Act of this character works with equal justice in all cases. It was the plain duty of the Board to adjust these inequalities, when they arose, as best they could. If they did violence to one provision of the statute, but thereby did equity to the teachers, there is no ground for complaint. The appellants in the present cases certainly received all they were entitled to under the Newman decision. Otherwise their claim is the same, that is, that they are entitled to the basic salary of the class in which put, plus one hundred dollars increase for the first year, as provided in section 4, plus four years' longevity, as provided in section 6. This court has decided, however, that they are entitled to the provisions of section 4, but not to those of section 6 in addition.

Legislative Incidents.

The discussions on the bill both on the floors of the Senate and the House were gone over thoroughly in the appendix to the brief filed by counsel for the teachers on the motion for a rehearing in the Newman case. Nothing new has been developed in the last brief of the teachers.

Attention is called by appellants to the amendment offered and rejected confining credit for service prior to July 1, 1924, to teachers, and also confining it to service in the District schools. Counsel frankly admits that the reasons for the rejection of this amendment do not appear in the Congressional Record, Brief, p. 21, but makes his own guesses for this action. To make guesses in the contrary direction, it might be said that sufficient reasons, which accord with the interpretation already adopted by this court, and which appear to be more logical, would be—

1. Congress expressly excluded longevity accrued prior to the Act in the case of the officers mentioned in Art. 11.

2. The Act made longevity already accrued, with the bonus, a part of the basic pay under the Act. See section 4.

3. Congress by section 6 gave teachers newly placed in the school system the benefit of longevity accrued prior to the Act. That is, the longevity clause of section 6 was originally intended to bring in experienced

teachers from the outside, for they could not be obtained otherwise, and there is no reason to think the statute now means anything different; and, further, no case has yet arisen to justify a different interpretation to be given to that section. When a local teacher is placed in a class for which an outside teacher would get longevity, and is refused credit for previous experience in like positions, the question may be raised. At present it is a moot question.

The discussion on the floor of the House developed exactly the situation which might, and always is, to be expected. The members expressed different views as to the operation of the law. Mr. Madden was apprehensive lest the law should be so interpreted as to include prior longevity, and was opposed to that interpretation. His doubts were apparently assuaged. Messrs. Jones, Lehlbach and McDowell, also, were opposed to that interpretation. Messrs. Blanton, Oliver and Black were of the opinion that prior longevity was to be given.

Individual expressions of opinion, however, lead nowhere, but serve only to confuse. This is the reason why such debates are not considered as evidence, and the reports of committees which make a careful and detailed study of the bills are admitted in evidence. *Aldridge v. Williams*, 3 How. 9, 24; *U. S. v. Union Pac. R. Co.*, 91 U. S. 72; *D. C. v. Wash. Market Co.*, 108 U. S. 243; *Dunlop v. U. S.*, 173 U. S. 65.

“There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which

to discover the meaning of a statute passed by that body.”

U. S. *v.* Trans. Mo. Freight Ass., 166 U. S. 290, 318.

But reports of committees stand upon a very different basis. See

Holy Trinity Church *v.* U. S., 143 U. S. 457, 464-5.

In the last-named case these reports practically determined the decision of the court.

In view of the specific illustrations of how the law would operate when it went into effect, there can be no doubt that the decision of this court in the Newman case was correct and embodied exactly the views of the committees of the Senate and House which had the bills in charge and had made a careful and detailed study of them.

Some argument is sought to be pinned upon the last paragraph of Art. 11, denying to the officers mentioned in that Article the benefits of prior longevity. As longevity was expressly denied to these officers the teachers argue that it was not denied to others. This argument overlooks the fact that prior longevity was expressly included by the provisions of section 4. It also overlooks the very specific provisions of that section, par. (c), by which the salaries for the fiscal year ending June 30, 1925, were regulated, and it ignores, of course, the reports of the committees so often discussed.

Past Credit under the Old Statute.—This part of the brief is a discussion of the longevity steps of the old laws, which throws no light whatever upon the present issues. There is an argument based upon counsel's conception of what "accredited" schools means, and a jump to the conclusion that section 6 is cumulative with section 4. This argument has been completely answered in the opinion of the court in the Newman case.

Criticisms of the language used by Congress and suggestions of language that would have clarified the statute are beside the point at the present time. We are dealing with the law as worded. Courts and counsel would be saved much time and labor if they had the opportunity and power to make changes in the wording of pending legislation.

Further Comparison with Former Longevity Acts.—Hypothetical cases of the application of longevity to Class 6, Group A, of the old laws, normal, high and manual school teachers, do not seem to be pertinent. Such cases could not arise today and it is idle to speculate what would have happened under these old laws, all of which have been superseded by the Act of 1924. Nor does the assumed case involve the pay of grade teachers.

Counsel do not care to repeat the argument advanced in the Newman case. That case was prepared so carefully, at least on the part of the teachers, that nothing was left to inference. The last brief for the teachers has been prepared with equal, if not more,

care, but nothing new has been developed. Points have been elaborated and illustrated, but no new matter or argument introduced. The situation is just where it was before the present cases were brought. They must fall by force of the decision in the Newman case.

Respectfully submitted,

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